(8265)

No. 82-1889-CFX
Status: GRANTED

Title: Springfield Township School Dist t, et al., Petitioners
v.
Madelin H. Knoll

Docketed:
May 20, 1983

Court: United States Court of Appeals for the Third Circuit

Counsel for petitioner: Potash, Charles

Counsel for respondent: Chanin, Robert H.

Entry	Date	Note	Proceedings and Orders
1	May 20 1983	G	Petition for writ of certiorari filed.
3	Jun 15 1983		Order extending time to file response to petition unti July 22, 1983.
4	Jun 21 1983		Brief amicus curiae of State of Maryland filed.
5	Jul 21 1983		Brief amicus curiae of Pennsylvania, et al. filed.
6	Jul 22 1983		Brief of respondent Madelin H. Knoll in opposition filed.
7	Jul 27 1983		DISTRIBUTED. September 26, 1983
9	Oct 26 1983		REDISTRIBUTED. November 11, 1983
10	Jun 22 1984		REDISTRIBUTED. June 28, 1984
11	Jul 2 1984		Petition GRANTED.
			**********
12	Aug 15 1984		Brief of petitioners Springfield Towrship Sch. Dist., et a filed.
13	Aug 15 1984		Joint appendix filed.
14	Aug 16 1984		Brief amicus curiae of Pennsylvania, et al. filed.
16	Sep 6 1984		Order extending time to file brief of respondent on th merits until October 1, 1984.
17	Oct 1 1984		Brief of respondent Madelin H. Knoll filed.
18	Oct 4 1984		Record filed.
19	Sep 20 1984		Record filed.
20	Sep 20 1984		Certified copy of partial proceedings received.
21	Dec 4 1984		SET FOR ARGUMENT. Monday, January 14, 1985. (1st case)
22	Dec 10 1984		CIRCULATED.
23	Jan 14 1985		ARGUED.

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No.

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MAY 20 1983
ALEXANDER L. STEVAS,
CLERK

THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a political subdivision of the Commonwealth of Pennsylvania; ROMAN, LOUIS A., Superintendent, Springfield Township School District; LAWN, JOHN J., HANSHAW, MARIE M., COMMINS, JAMES A., GOREN, SARA LEE, HOCK JR., WILLIAM C., HOGUE JR., E. BURKE, KALISH, SALLY, LIEBERMAN, MAX L. and TOBIN, HARPUR M., Individually and as members of the Board of School Directors, Springfield Township School District,

Petitioners

v.

KNOLL, MADELIN H.,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

65 + 1 foldout

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

May a state six-month statute of limitations governing actions against public officials, which would otherwise be applicable and bar a Section 1983 claim of employment discrimination on the basis of sex, be disregarded on the ground that it is inconsistent with the federal policy underlying the cause of action under consideration?

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OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE COURTS BELOW

(1) *Knoll v. Springfield Township School District*, 699 F.2d 137 (3d Cir. 1983), rehearing denied, 699 F.2d 137 (3d Cir. 1983)

(2) *Knoll v. Springfield Township School District*, unreported, (E.D. Pa., filed March 19, 1982.)

JURISDICTIONAL STATEMENT

(1) The judgment sought to be reviewed was filed on January 27, 1983;

(2) An order denying rehearing was entered on February 23, 1983.

(3) 28 U.S.C. Section 2101 (c) confers jurisdiction on this Court to review the judgment in question by Writ of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following constitutional and statutory provisions:

(1) Section 1 of the Civil Rights Act of 1871, as amended, 42 U.S.C. Section 1983, which provides as follows:

> CIVIL ACTION FOR DEPRIVATION OF RIGHTS
>
> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, in equity, or other proper proceeding for redress.

(2) 42 U.S.C. Section 1988, which provides as follows:

> PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS
>
> The jurisdiction in civil and criminial matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution

and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(3) Section 5522 (b)(1) of the Pennsylvania Judicial Code, 42 Pa. C.S. Section 5522 (b)(1), which provides:

(b) Commencement of Action Required — the following actions and proceedings must be commenced within six months:

(1) An action against any officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this subchapter.

(4) Section 5527(6) of the Pennsylvania Judical Code, 42 Pa. C.S. Section 5527(6) which provides:

SIX YEAR LIMITATION

The following actions and proceedings must be commenced within six years:

. . . (6) Any civil action or proceeding which is neither subject to another limitation specified in this subchapter nor excluded from the application of a period of limitation by Section 5531 (relating to no limitation).

STATEMENT OF THE CASE

Respondent, Madelin Knoll, commenced this suit to redress alleged discrimination on the basis of sex by her employer, the School District of Springfield Township (the "School District"). One of her claims sought relief under 42 U.S.C. Section 1983.[1] The School District Defendants moved for summary judgment on the ground that the Section 1983 claim was barred by the Pennsylvania six-month statute of limitations governing actions against public officials.[2] The District Court agreed.[3]

The Court of Appeals, in a panel decision, reversed on the ground that the Pennsylvania six-month limitation period was inherently inconsistent with the federal policies to be fostered by Section 1983.[4] In doing so, it reasoned that the "average citizen is not sufficiently conversant" with constitutional law to file an action within six months of the ocurrence of alleged discrimination; that the six month period would have a tendency "to severely limit access" to the federal courts, thereby conflicting with the remedial spirit of Section 1983; and that, alternatively, a six-month limitation "would be inconsistent with the legislative history and subsequent judicial construction of [the Civil Rights Act]". The court based its last conclusion upon its review of Sections 1981, 1982 and 1985 of Title 42 of the United States Code which afford relief against non-governmental defendants and held that, because different limitation periods would apply to those private parties, a lack of uniformity would result which, in turn, would violate the policies underlying Section 1983.

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1. In the alternative, the employee sought relief under Section 703 of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-2 ("Title VII"). See Appendix, A-36, for a copy of Respondent's Complaint.
2. 42 Pa. C.S. Section 5522(b)(1).
3. See Appendix, A-19, for a copy of the District Court opinion.
4. See Appendix, A-1, for a copy of the Court of Appeals decision.

The School District Defendants applied for rehearing. The application was denied, with four judges voting to grant rehearing in banc.[5] Judge Adams, writing on behalf of the dissent, noted that the panel's decision conflicted with the decisions of the First and Eighth Circuits[6] and that the panel's Opinion failed to follow this Court's admonition in *Board of Regents v. Tomanio*, 446 U.S. 478 (1980), that it was "to give weight to the significant policies underlying the state statute of limitations." The dissent further took issue with the panel's failure to explain "with any precision" why the limitations period could not be squared with the policies underlying the civil rights statutes and criticized its conclusion, made without citation to any evidence or empirical data,[7] that six months was too short a time for the "average plaintiff" to file a Complaint. In doing so, Judge Adams noted that a time limit of 180 days had sometimes been prescribed by Congress for the filing of charges under civil rights statutes, including Title VII, and questioned whether there was any basis for concluding that Congress would permit a Title VII claim to be barred after the passage of 180 days and not have intended a Section 1983 claim, based on the same operative facts, to be similarly barred by a six-month state statute of limitations.[8]

Ms. Knoll asserted as a basis for subject matter jurisdiction in the District Court the Civil Rights Acts of 1871 and 1964.[9]

5. See Appendix, A-31, for a copy of the Order denying Rehearing and Statement Sur Denial of Petition for Rehearing.

6. Judge Adams made reference to *Burns vs. Sullivan*, 619 F.2d 99 (1st Cir. 1980), *cert. denied*, 449 U.S. 893 (1980) and *Warren vs. Norman Realty Co.* 513 F.2d 730 (8th Cir. 1974), *cert. denied*, 423 U.S. 855 (975). See pp. 9-11 *infra*.

7. The record of this case is completely devoid of any averments, testimony, documents or other evidence or data relating to the time required to prepare and file a Section 1983 complaint. The public policy issue was not raised by Ms. Knoll before the District Court in which the only argument advanced in opposition to the application of the six-month limitation period was that that limitation was not the analogous statute of limitations to be applied under the rules in *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975), and *Tomanio*, supra. (Brief in Opposition to Defendants' Motion for Summary Judgment).

8. The facts underlying the civil rights claims as pleaded in Respondent's Complaint are as follows:

> In July or August, 1979, a man was appointed to the position of Administrative Assistant of the School District—a position for which Ms. Knoll had applied. On August 2, 1979, the Superintendent notified Ms. Knoll of that action. On May 28, 1980, Ms. Knoll was advised by a letter from the Superintendent that she would not be appointed to any administrative position for the 1980-1981 school year. In September 1980, the Administrative Assistant was promoted to Assistant Superintendent—a position for which Mr. Knoll had not applied.
>
> Ms. Knoll then filed a Complaint with the EEOC on December 12, 1980 in which she stated that it was her belief that had she been selected for the position of Administrative Assistant in July 1979, that she would have been promoted to Assistant Superintendent in 1980. The charges were dismissed by the EEOC "because it was untimely filed."
>
> This suit was commenced in District Court on April 21, 1981.

9. 42 U.S.C. Sections 1983 and 2000e-2. The District Court has jurisdiction of civil rights' claims pursuant to 28 U.S.C. Sections 1331, 1343, 2201, 2202 and 42 U.S.C. Section 2000 (e-5)(f)(3.). In the District Court, the School District Defendants challenged subject matter jurisdiction because this action was commenced before the decision of this Court in *Zipes v. Transworld Airlines, Inc.*, 455 U.S. 385 (1982).

REASONS FOR ALLOWANCE OF CERTIORARI

I. *The decision of the United States Court of Appeals for the Third Circuit conflicts with the decisions of other courts of appeals as to whether six-month statutes of limitations may, consistent with federal policy, be applied to federal civil rights actions.*

Federal law specifies no statute of limitations for actions under Section 1983. *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975) (*"Johnson"*). Section 1988 of Title 42 fills that void by requiring federal courts adjudicating civil rights claims to refer to state law "when federal law provides no rule of decision". *Board of Regents v. Tomanio*, 446 U.S. 478, 484 (1980) (*"Tomanio"*). Thus, the applicable limitations period is that which would govern in the courts of the forum state in an action seeking similar relief under state law unless that limitations period is "inconsistent with the Constitution and law of the United States" or "with the federal policy underlying the cause of action under consideration." *Johnson*, supra, at 465.

In this case, the Court of Appeals initially applied that standard and determined that the six-month limitation period of 42 Pa.C.S. Section 5522(b)(1) would have governed Ms. Knoll's claims had she brought her action under state law, in state court.[10] In so ruling, the Court of Appeals determined that had Ms. Knoll's claims been brought in state court, her action would have been time barred.[11] The panel, however, determined that application of the six-month statute of limitations would "contravene the remedial purpose of federal civil rights actions and deny [Ms. Knoll] the breadth of Section 1983's

10. *Eshmont vs. Commonwealth*, No. 1390 C.D. 1981 (Pa. Commw. Ct. November 24, 1981).

11. As noted above, the last asserted discriminatory act occurred, if at all, in September 1980 and suit was not commenced until April 21, 1981. See fn. 8, supra.

sweep." It reasoned, in substance, that the six-month limitation period did not leave the court's doors open long enough to permit a plaintiff injured by state action to prevail and was therefore "inconsistent with the federal interest sought to be vindicated."

In reaching this conclusion, the Court below did not address or attempt to distinguish the decisions of the First and Eighth Circuits upholding the application of six-month limitation periods to civil rights claims.[12]

Specifically, in *Burns v. Sullivan*, supra, the Court applied the Massachusetts six-month statute of limitations governing actions for racial discrimination in public employment and promotion to bar Section 1983 and 1985(3) claims. In that case, a police officer asserted that he had been wrongfully passed over for promotion because of his race. The District Court granted summary judgment in favor of the public employer based on the Massachusetts six-month limitation period. The Court of Appeals for the First Circuit affirmed. In doing so, it considered and rejected the contention that a six-month limitation period was inconsistent with federal policy:

> Although it may take more than six months to properly prepare a civil rights case, a complaint meeting the requirements of Fed. R. Civ. P. 8(a) can surely be filed in that time. Any amendments to the complaint and supplemental pleadings may be sought after suit is brought. Fed. R. Civ. P. 15.
>
> * * *

12. *Burns vs. Sullivan*, 619 2d 99 (1st Cir. 1980) *cert. denied* 449 U.S. 893 (1980); *Hussey vs. Sullivan*, 651 F.2d 74 (1st Cir. 1981); *Holden vs. Massachusettes Commission Against Discrimination*, 671 F.2d 30 (1st Cir. 1981), *cert. denied*, —— U.S. ——, 103 S. Ct. 97 (1982); *Carter vs. Supermarkets General Corp.*, 684 F.2d 187 (1st Cir. 1982); *Dewey vs. University of New Hampshire*, 694 F.2d 1 (1st Cir. 1982); *Warren vs. Norman Realty Co.*, 513 F.2d 730 (8th Cir. 1974) *cert. denied*, 423 U.S. 855 (1975); *Green vs. Ten Eyck*, 572 F.2d 1233 (8th Cir. 1978).

> . . . In our view, although this rule shortens considerably the time in which an aggrieved person can bring a Section 1983 action for . . . discrimination in public employment, it conflicts with no federal policy and enhances the ability of the state to resolve its own personnel problems. The time period is no shorter than the six-month period available to federal and state employees under Title VII of the Civl Rights Act of 1964 for initiation of a complaint of . . . discrimination in employment. [citations omitted]. *Burns v. Sullivan*, supra, at 106-107.

The Court in *Burns* also emphasized the "important policy reasons" which support using the limitations of a state statute protecting the same rights sought to be vindicated by a federal civil rights action: that a longer limitations period for the federal action would encourage public employees to bypass state proceedings and force the federal courts, in the first instance, to become involved in the resolution of local government personnel matters. *Burns v. Sullivan*, supra, at 107.

The First Circuit has consistently followed its holding in *Burns v. Sullivan*, supra. For example, in *Carter v. Supermarkets General Corporation*, 684 F.2d 187 (1st Cir. 1982), and *Hussey v. Sullivan*, 651 F.2d 74 (1st Cir. 1981), the Court applied the Massachusetts' six-month statute of limitations governing suits for discrimination. In *Dewey v. University of New Hampshire*, 694 F.2d 1 (1st Cir. 1982), the Court applied the New Hampshire "Law Against Discrimination" ninety-day statute of limitations to bar a Section 1983 due process and equal protection claim.

The Eighth Circuit Court of Appeals has reached a similar result. In *Warren v. Norman Realty Co.*, 513 F.2d 730 (8th Cir. 1974), *cert. denied*, 423 U.S. 855 (1975) and *Green v. Ten Eyck*, 572 F.2d 1233 (8th Cir. 1978), the Court applied to federal civil rights claims challenging local housing practices the 180-day limitation period imposed by Nebraska's and Missouri's fair housing laws.[13]

The Third Circuit did not address and did not attempt to distinguish the decisions of the First and Eighth Circuits cited above. Furthermore, in reaching its decision, the panel did not consider the important state policies reflected in the Pennsylvania statute of limitations and did not delineate or consider the conflicting federal policies. Instead, from a vacuum caused by the absence of any evidence or empirical data on the question, the Court formed its own judgment as to what limitation period appeared fair and reasonable for the commencement of a civil rights action. For this reason, and because the result reached conflicts with the decisions of the First and Eighth Circuits, certiorari should be granted to review the judgment below.

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13. At least 33 states have statutes of limitations of less than one year which, arguably, could be applied to civil rights actions. In addition to Massachusettes, New Hampshire, Nebraska, Missouri, cited in the text, see:

> ARIZ. REV. STAT. ANN §41-1481 (six-month limitation; employment discrimination); COLO. REV. STAT. §24-34-504 (ninety day limitation; housing discrimination); CONN. GEN. STAT. §462-82 (six-month limitation; employment discrimination); DEL. CODE ANN. tit. 6 §4605 (six-month limitation; housing discrimination); FLA. STAT. ANN. §23.167 (six-month limitation; employment discrimination); GA. CODE ANN. §89-1714 (six-month limitation; employment discrimination); HAWAII REV. STAT. §378-4 (ninety day limitation; discrimination action); ILL. REV. STAT. ch. 68 §7-102 and 103 (one hundred eighty day limitation; civil rights violation); IND. CODE ANN. §34-4-16.5-7 (one hundred eighty day limitation; political subdivision claim). IOWA CODE ANN. §601 A.15(12) (one hundred eighty day limitation; employment discrimination); KAN. STAT. ANN. §44-1004 and 1005 (six-month limitation; employment discrimination); KY. REV. STAT. §344.200 (six-month limitation: employment discrimination); ME. REV. STAT. ANN. tit. 5 §4611 (six-month limitation; employment discrimination); MASS. GEN. LAWS ANN. ch. 151B §5 (six-month limitation; employment discrimination), MICH. STAT. ANN. §3.548(601) II (b) (ninety day limi-

II. *The decision of the Court of Appeals conflicts with the decision of this Court in Board of Regents v. Tomanio, supra, on a matter which involves an important question of federal law regarding application of state statutes of limitations to federal civil rights actions.*

Contrary to this Court's directive in *Tomanio*, supra, the Third Circuit failed to consider and give proper weight to the Pennsylvania state policy underlying its statute of limitations for actions against public officials. As Judge Adams observed in his dissent from the denial of rehearing:

> There is no indication that the opinion in the present case follows *Tomanio's* direction to give weight to the significant policies underlying the state statute of limitations. 699 F.2d, at 147.

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tation; employment discrimination); MINN. STAT. ANN. §363.06 (six-month limitation; employment discrimination); MO. ANN. STAT. §213.120 (one hundred eighty day limitation, housing discrimination), MONT. CODE ANN. §49-2-501 (six-month limitation; employment discrimination); NEB. REV. STAT. §20-119 (six month limitation, housing discrimination); NEV. REV. STAT. §613.430 (six month limitation; employment discrimination); N.H. REV. STAT. ANN. §354 A:10 (ninety day limitation; discrimination action); N.J. REV. STAT. §10:5-18 (six-month limitation; discrimination action); N.M. STAT. ANN. §28-1-10 (ninety day limitation; discrimination action); OHIO REV. CODE ANN. §4112.05 (six-month limitation; discrimination action); OKLA. STAT. ANN. tit. 25 §1501 (six-month limitation; discrimination action); R.I. GEN. LAWS §28-6-10 (four month limitation; employment discrimination); S.C. CODE ANN. §65-2D(1) (six-month limitation; employment discrimination); S.D. CODIFIED LAWS §20-13-31 (one hundred eighty day limitation; discrimination action); TENN. CODE ANN. 4-21-117 (one hundred eighty day limitation; discrimination action); UTAH CODE ANN. 34-35-7(15) (thirty day limitation; discrimination action); VA. CODE §36-94 (one hundred eighty day limitation; housing discrimination); W.VA. CODE §5-11-10 (ninety day limitation; discrimination action); WYO. STAT. §27-9-106 (ninety day limitation; employment discrimination).

The failure of the court below properly to apply the *Tomanio* test justifies review by this Court.

The rule in *Tomanio* is clear. In civil rights actions, "state statute(s) of limitations . . . are more than a technical obstacle to be circumvented if possible. In most cases, they are binding rules of law." 446 U.S., at 484. It is only in the event that the policies underlying the state statute of limitations are inconsistent with the federal policies to be fostered by the civil rights statutes, that the state statute may be ignored. 446 U.S., at 487. In this case, the Third Circuit not only failed to allow this rule, but even failed to consider the policies on which the state statute is based.

State statutes of limitations represent the considered judgment of the state legislature "concerning the point at which the interests in favor of protecting valid claims are outweighed by the interest in prohibiting the prosecution of stale ones." *Johnson*, supra, at 463-464. See also, *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 313 (1945). The provisions of 42 U.S.C. Section 1988 — that federal courts adjudicating civil rights claims are to refer to state law "when federal law provides no rule of decision," *Tomanio*, supra, at 484 — reflects the intent of Congress that a federal court's reliance "on the State's wisdom in setting a limit", is proper. *Johnson*, supra, at 464. Thus, in general, a state statute of limitations which does not discriminate against federal rights and which gives the party a reasonable time to sue must be applied. *Campbell v. Haverhill*, 155 U.S. 610, 615-616 (1895). Further, a state statute of limitations does not discriminate against federal rights and "cannot be considered 'inconsistent' with federal law merely because the statute causes the plaintiff to lose the litigation." *Tomanio*, supra, at 488. See also, *Robertson v. Wegmann*, 436 U.S. 584 (1978). As stated by this Court in *Tomanio*:

> This is obviously a judicial recognition of the fact that congress, unless it has spoken to the contrary,

did not intend by the mere creation of a "cause of action" or "claim for relief" that any plaintiff filing a Complaint would automatically prevail if only the necessary elements of the federal substantive claim for relief could be established. Thus, in general, state policies of repose cannot be said to be disfavored in federal law. *Tomanio*, supra, at 488.

For these reasons, the "borrowing" of state statutes of limitations in the context of Section 1983 claims does not contravene the two principal policies embodied in the civil right act: "deterrence and compensation." *Tomanio*, supra, at 488-489. If the Court of Appeals had applied that standard in this case and, specifically, had considered the state policies at issue, it should not have rejected the application of the Pennsylvania six-month statute of limitations to bar Ms. Knoll's Section 1983 claims. See *Burns v. Sullivan*, supra and *Warren v. Norman Realty Co.*, supra.

Pennsylvania's six-month limitation period for claims against public officials clearly fosters important state policies beyond those reflected in limitation statutes generally. First, state and local governments are more likely to experience frequent changes in personnel than other employers. Because public officials' continued service is subject to the will of the electorate, even a short passage of time may result in the departure from government of persons with knowledge of the circumstances surrounding the claim. Further, upon their departure from government, formal officials may be reluctant to cooperate fully in assisting in the defense of claims burdening their successors or political opponents. This factor, in addition to the large volume of business and transactions handled by government, often creates serious problems in keeping track of and marshalling the witnesses and documentary evidence necessary to defend against claims of discrimination. Secondly, and specifically applicable to cases involving discrimination in the hiring or promotion of public em-

ployees, prompt assertion and resolution of claims is crucial. Each day of delay in the bringing of a claim further entrenches the hired or promoted employee in his position and entitles the hired or promoted employee to seniority, tenure, due process rights and the like. This, in turn, would further burden the government with the potential for further litigation in the event its conduct was ultimately found to be discriminatory. With prompt commencement of an action within the six-month period, the government employer could take steps to lessen or totally eliminate this problem. Thirdly, the prompt assertion and resolution of claims against the government is necessary to protect tax revenues and to promote sound fiscal planning. As a general rule, governments are prohibited from making expenditures for which they have not budgeted. These considerations in the context of this case, provide additional justification for respecting the state's choice.

When these state policies are considered and evaluated, it is clear that they in no way conflict with the federal interests secured by the civil right acts. The "principal policies embodied in Section 1983 [are] deterrence and compensation." *Tomanio*, supra, at 488. These policies are not significantly effected by Pennsylvania's statute. Claims can be readily enforced, compensation can be readily received and deterrence can be readily fostered if suit is commenced while the claim is fresh.

The conclusion of the Third Circuit that six months simply is too short a time for the filing of a claim is unsupported and unsupportable. First, in the context of this case, the conclusion was made without any basis in the record evidence or empirical data from any source whatsoever. Thus, even had the panel made an attempt to do so, it could not have demonstrated by specific reference to the facts of this case that six months was insufficient for Ms. Knoll or any hypothetical "average plaintiff" to file a Complaint. Certainly, Congress did not

believe 180 days was inherently too short a time in which to require the commencement of civil right proceedings. See, 42 U.S.C. Section 2000e-5(e) (employment discrimination); 42 U.S.C. Section 3610(b) (housing discrimination). Further, as noted by Judge Adams in his dissent, the liberal amendment provisions of the federal rules substantially minimizes any burden to which a plaintiff might be subjected by the requirement that a Complaint be filed within six months.

The Court of Appeals' reliance upon the federal policy, that vindication of individual rights is to be favored, was also misplaced. Once again, the six-month statute of limitations has no direct impact on that policy. Apparently, the Third Circuit was concerned that some rights will not be vindicated because the statute will bar the claim. This concern is unfounded in light of this Court's directive that "a state statute cannot be considered 'inconsistent' with federal law merely because the statute causes the plaintiff to lose the litigation." *Robertson v. Wegmann*, supra, at 593.

In rejecting the six-month limitation period, the Court of Appeals additionally reasoned that the application of the six-month period to actions against public officials would lead to the application of different limitation periods to different types of civil rights actions and concluded that this would violate what it considered to be a congressional policy of uniformity. 699 F.2d at 143-144. In this regard, the Court again departed from the holding of this Court in *Tomanio*, Specifically, as noted by this Court in *Tomanio*:

> Uniformity has also been cited as a federal policy which sometimes necessitates the displacement of an otherwise applicable state rule of law. [citation omitted]. The need for uniformity, while paramont under some federal statutory schemes, has not been held to warrant the displacement of state statutes of limitations for civil rights actions [citation omitted]. *Tomanio*, supra, at 489.

For these reasons, considerations of "uniformity" should not have controlled the decision in this case. Clearly, congressional reliance on state law, as provided by 42 U.S.C. Section 1988, obviously pre-supposes lack of nationwide uniformity. *Robertson v. Wegmann*, supra, at 594, n. 11. The same rationale applies here. If Congress had no difficulty with application of varying limitations for the very same cause of action brought in different states, it is not reasonable to conclude that federal policy would be substantially undermined by the application of different limitation periods to different causes of action brought in the same forum.[14]

For these reasons, the Third Circuit, when it rejected the Pennsylvania six-month statute of limitations, failed to follow this Court's directives in *Tomanio*. The Court below had no substantial basis for negating the state's considered judgment that claims against public officials are to be commenced within six months. The Third Circuit did not consider the significant state policies which prompted the enactment of the six-month statute and, as a result, failed to compare "these state and federal policies which the respective legislatures sought to foster." *Tomanio*, supra, at 487. This Court, therefore, should grant certiorari to review the judgment below.

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14. The relative unimportance of considerations of uniformity as compared with considerations of the state policies reflected in the state statutory limitations scheme has been uniformly recognized by decisions of the Third Circuit made prior to the enactment of the Pennsylvania judicial code. See, e.g., *Skehan vs. Board of Trustees*, 590 F.2d 470-77 (3d Cir. 1978), *cert. denied*, 444 U.S. 832 (1979); *Davis vs. United States Steel Supply*, 581 F.2d 335, 337-41 (3d Cir. 1978). That is, the Third Circuit itself, prior to the enactment of the Pennsylvania judicial code, segregated various aspects of civil rights claims and applied the different, analogous state limitations periods to each separate claim. This type of reasoning has also been applied by the Eighth Circuit Court of Appeals. For example, in *Green vs. Ten Eyck*, supra, the court sanctioned the application of different statutes of limitations to suits seeking redress for discrimination against public officials as opposed to analogous suits against private individuals. *Green vs. Ten Eyck*, supra, at 1238-39.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decision of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

WISLER, PEARLSTINE, TALONE, CRAIG & GARRITY

By: Charles Potash
Harris F. Goldich

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-1241

KNOLL, MADELIN H.,

Appellant

v.

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a political subdivision of the Commonwealth of Pennsylvania; ROMAN, LOUIS A., Superintendent, Springfield Township School District; LAWN, JOHN J., HANSHAW, MARIE M., COMMINS, JAMES A., GOREN, SARA LEE, HOCH JR., WILLIAM C., HOGUE JR., E. BURKE, KALISH, SALLY, LIEBERMAN, MAX L. and TOBIN, HARPUR M., individually and as members of the Board of School Directors, Springfield Township School District

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

(D.C. Civil No. 81-1626)

Submitted Under Third Circuit Rule 12(6)
January 6, 1983

Before: ALDISERT, GIBBONS, and HIGGINBOTHAM,
Circuit Judges

(Filed January 27, 1983)

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OPINION OF THE COURT

ALDISERT, *Circuit Judge*.

Until recently, Pennsylvania's omnibus six-year statute of limitations, set forth in the Act of March 27, 1713,[1] properly governed employment discrimination suits brought in Pennsylvania under the federal Civil Rights Acts. By 1978, however, Pennsylvania had repealed the Act of 1713 and completely revised its statutes of limitations.[2] The major question before us is whether a new six-month statute of limitations governing suits against government officials applies to employment discrimination claims brought under 42 U.S.C. §1983.[3] We hold that because application of the

1. Pa. Stat. Ann. tit. 12, §31 (Purdon 1953 & Supp. 1982) (repealed 1978).

2. *See* Act of July 9, 1976, 42 Pa. Cons. Stat. Ann. §§5521-5536 (Purdon 1981).

3. 42 U.S.C. §1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

six-month limitations period would be inconsistent with the policies and legislative history underlying §1983, and because none of Pennsylvania's more specific limitations provisions would apply, that the six-year residuary provision of the limitations schema should govern this dispute. We, therefore, reverse that part of the district court's judgment which determined that appellant's §1983 claim was time-barred after six months. This appeal also asks us to review the district court's rejection of appellant's claim of employment discrimination brought under Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. §2000e-e-17, as time-barred. We reverse that part of the judgment as well.

I.

For the purposes of our decision, we take as true the material facts alleged in the complaint. They are not complicated. On December 12, 1980, appellant Madelin H. Knoll, a teacher employed by the Springfield Township School District, filed a charge with the United States Equal Employment Opportunity Commission (EEOC), alleging that her employer had discriminated against her on the basis of sex in failing to promote her to several administrative positions. On January 28, 1981, the EEOC issued her a right to sue letter and dismissed the charge as untimely filed. On April 21, 1981, she filed a civil action in the district court against the school district and the individual members of the school board contending that the school district's failure to promote her to the position of Administrative Assistant to the Superintendent in July 1979, and later to Assistant Superintendent in September 1980, violated §703 of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. §2000e-2.

The complaint further alleged that the individual school directors had acted under color of state law to deny appellant the equal protection of the laws under the fourteenth amendment, in violation of §1983.[4]

The school district and the individual members of the school board moved for summary judgment, arguing, *inter alia*, that both claims were barred by statutes of limitations. After oral and written argument, the district court agreed. It ruled that the §1983 action was time-barred by the new Pennsylvania statute which limits actions against government officials to six months, and that the Title VII claim was time-barred because it

4. She averred in her complaint, *inter alia*, that:

1) she was fully qualified and certified for the position of Administrative Assistant to the Superintendent of the School District for which she applied in July 1979;

2) she was notified by Superintendent Louis A. Roman on August 2, 1979 that he had chosen Frank Romano, a male applicant with fewer qualifications and no Pennsylvania Department of Education certification, to be his Administrative Assistant;

3) shortly thereafter, Superintendent Roman promised he would create an administrative position for her during the 1979-80 school year as compensation for not having chosen her for the position of Administrative Assistant, that no such position was created, and that on May 28, 1980, Roman wrote her that he would not, in fact, create such a position for her during the next school year;

4) in September 1980, Administrative Assistant Frank Romano was promoted to Assistant Superintendent, a position which had existed in the past but was recreated specifically for him;

5) although the school district, its officers, agents, and representatives, knew that she was willing and qualified to assume the position of Assistant Superintendent in September 1980, she was not offered an opportunity to compete for the vacancy and was not considered for same because of her sex;

6) the decisions not to promote her to administrative positions in July 1979, May 1980, and September 1980 were the result of a continuing policy of sex discrimination by the school district and its officers, agents, and representatives.

was filed more than 180 days from the last discriminatory act which the court determined occurred in July 1979. The district court thus granted the summary judgment motion and dismissed the complaint. From this decision and order, Ms. Knoll appeals.

II.

Appellant's primary contention is that the district court erred in applying Pennsylvania's six-month statute of limitations to her claim of employment discrimination under §1983. That limitations provision, enacted as part of the new Pennsylvania Judicial Code, provides:

> (b) Commencement of action required — The following actions and proceedings must be commenced within six months:
>
> (1) An action against any officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this subchapter.

42 Pa. Cons. Stat. Ann. §5522(b)(1)(Purdon 1981).

She argues that instead the residuary provision of Pennsylvania's limitations schema should govern her cause of action. That Code provision establishes a six-year limitations period for:

> Any civil action or proceeding which is neither subject to another limitation specified in this subchapter nor excluded from the application by a period of limitation by section 5531 (relating to no limitation).

42 Pa. Cons. Stat. Ann. §5527(6) (Purdon 1981). To support her argument, appellant maintains that the six-month limitations provision is not the most analogous state statute to apply to a §1983 action, that its application is inconsistent with federal policy, and that the application of different statutes of limitations to govern-

ment and nongovernment defendants violates her right to equal protection under the law.

Appellant's next contention is that the district court erred in determining that her Title VII claim was time-barred. She argues that because appellees engaged in a continuing policy of discrimination, her charge was filed within 180 days of the last discriminatory act, as required by statute.

In reviewing the district court's summary judgment order, we are guided, as was the trial court, by the standard set forth in Rule 56(c), F. R. Civ. P.: summary judgment is proper when it appears "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *See Goodman v. Meade Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976). With this standard in mind, we will address first the question of the statute of limitations applicable to a §1983 action. In so doing, we note that because the parties do not contest any material fact applicable to that action, we can only uphold the summary judgment ruling as to appellant's §1983 claim if we find that the six-month statute of limitations applies, as appellees contend, as a matter of law.

III.

Because Congress has not prescribed a specific statute of limitations for actions brought under §1983, it is necessary to borrow "the state law of limitations governing an analogous cause of action." *Board of Regents v. Tomanio*, 446 U.S. 478, 483-84 (1980). Selection of the appropriate state limitations provision "requires characterization of the essential nature of the federal claim within the scheme created by the various state statutes of limitation." *Davis v. United States Steel Supply*, 581 F.2d 335, 337 (3d Cir. 1978). *See also Skehan v. Board of Trustees*, 590 F.2d 470, 476 (3d Cir. 1978), *cert. denied*, 444 U.S. 832 (1979); *Myers v. Pennypack Woods Home*

Ownership Ass'n, 559 F.2d 894, 900 (3d Cir. 1977), *Polite v. Diehl*, 507 F.2d 119, 122 (3d Cir. 1974) (in banc).

We have analogized a claim of employment discrimination brought under the federal Civil Rights Acts, to "those torts which involve the wrongful interference with another's economic rights or interests." *Skehan*, 590 F.2d at 477 (quoting *Davis*, 581 F.2d at 339). Although these federal Civil Rights Acts do not create federal tort law, they do create, *inter alia*, a right to be accorded equal status, free of gender-based discrimination in the pursuit of personal economic interests.

Review of the new Pennsylvania limitations schema, however, fails to reveal any provision expressly applicable to claims for the torts of wrongful discharge or interference with contractual or economic rights. *See* 42 Pa. Cons. Stat. Ann. §§5521-5536 (Purdon 1981); *Riccobono v. Whitpain Township*, 497 F.Supp. 1364, 1375 (E.D.Pa. 1980). Further, courts considering these torts have ascertained the applicable limitations period by reference to the two residuary provisions of the limitations scheme — the six-month and the six-year statutes of limitations — which control only when the nature of the dispute falls outside one of the more specific limitations provisions. *Compare Clyde v. Thornburgh*, 533 F.Supp. 279 (E.D.Pa. 1982) (six-month limitations period applicable to §1983 action) *with Riddick v. Cuyler*, No. 81-0246 (E.D.Pa. July 16, 1981)(six-year limitations period applicable to §1983 action). Because appellant's claim does not fit under one of the specific provisions, we must determine which of the two residuary provisions governs her §1983 action.

Our focus in this inquiry must shift from probing the nature of the cause of action — which is irrelevant once the more specific, non-residuary provisions have been discounted as inapplicable — to determining which statute of limitations the Pennsylvania courts would have applied had this action been brought under state law. Because the six-year limitation only applies if

the six-month limitation does not, we must first determine whether the courts would have applied the shorter limitation period to an employment discrimination suit brought against public officials under state law. Because appellant seeks relief from the school district and related officials for their unconstitutional actions in discriminating against her in her employment, she clearly brings "an action against any officer of any governmental unit for anything done in the execution of his office." 42 Pa. Cons. Stat. Ann. §5522(b)(1)(Purdon 1981). We conclude, therefore, that if she had brought her action in state court under state law, it would have been subject to the six-month limitations period. *See Clyde*, 533 F.Supp. at 286; *Eshmont v. Commonwealth*, No. 1390 (Pa. Commw. Ct. Nov. 24, 1981).

IV.

The court's authority to borrow a state statute of limitations to fill a void in federal law is not, however, unbounded. In 42 U.S.C. §1988, from which this borrowing authority is derived, Congress instructs the courts to turn to "the common law, as modified and changed by the constitution and statutes of the [forum] State," so long as it is "not inconsistent with the Constitution and laws of the United States." *See Robertson v. Wegmann*, 436 U.S. 584, 588 (1978); *Moor v. County of Alameda*, 411 U.S. 693, 702-03 (1973). This instruction reflects Congress' view that a borrowed state statute serves only as the source of the federal law which appropriately governs federal civil rights actions. When poured into the federal vessel, the state statute becomes a federal legal precept, and all aspects of the proceeding must be measured by the federal interest implicated in the case. This limitation on the absorption of state law is necessary because "[s]tate legislatures do not devise their [statutes of limitations] with national interests in mind[. I]t is the duty of the federal courts[, therefore,] to assure that the importation of state law will not frustrate

or interfere with the implementation of national policies." *Occidental Life Insurance Co. v. EEOC*, 432 U.S. 355, 367 (1977). Thus, in considering the potential applicability of Pennsylvania's six-month statute of limitations, we must keep as our polestar the precept that the analogous state law should not be borrowed if it is "inconsistent with the federal policy underlying [§1983]." *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 465 (1975).

After carefully considering §1983's legislative history, the Supreme Court articulated four major policies underlying the statute. First, it can "override certain kinds of state laws," to-wit, "any invidious legislation by states against the rights or privileges of citizens of the United States." *Monroe v. Pape*, 365 U.S. 167, 173 (1961). Second, "it provide[s] a remedy where state law [is] inadequate." *Id.* Third, it provides "a federal remedy where the state remedy, though adequate in theory, [is] not available in practice." *Id.* at 174. Finally, it provides "a remedy in the federal courts supplementary to any remedy any State might have." *McNeese v. Board of Educ.*, 373 U.S. 668, 672 (1963). In sum, §1983 offers "a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation." *Mitchum v. Foster*, 407 U.S. 225, 239 (1972). It should thus be accorded "a sweep as broad as its language." *Griffin v. Breckenridge*, 403 U.S. 88, 97 (1971) (quoting *United States v. Price*, 383 U.S. 787, 801 (1966)).

We conclude that if we were to apply Pennsylvania's six-month statute of limitations, we would contravene the remedial purpose of federal civil rights actions and deny appellant the breadth of §1983's sweep. We would be forced to ignore Justice Harlan's insightful observation that "a deprivation of a constitutional right is significantly different from and more serious than a violation of a state right and therefore deserves a different remedy even though the same act may constitute both a state

tort and the deprivation of a constitutional right." *Monroe*, 365 U.S. at 196 (Harlan, J., concurring). And we would ultimately defy congressional intent. In so concluding, we are influenced by pragmatic considerations as well as the legislative history and conceptual underpinning of the federal rights herein sought to be vindicated.

A.

Although actions under §1983 have been permitted since 1871, the use of this remedial vehicle in the modern era dates back only to 1961 and the landmark case of *Monroe v. Pape*, in which the Court courageously blazed a new and wide trail in constitutional law for the dual purposes of compensating persons injured by deprivation of federal rights and preventing abuses of power by those acting under color of state law. Since that decision, the definition of rights and remedies under the Civil Rights Acts has been an ongoing, dynamic process. Although experienced federal and state judges, members of the professoriat, and many, but not all, lawyers may be acutely aware of this definitional process, this professional familiarity is not widespread among members of the public. We are persuaded, therefore, that the average plaintiff who has been injured by state action is not sufficiently conversant with the intricacies and subtleties of constitutional law to recognize the constitutional deprivation, consult a lawyer, and prepare a case for filing in court within six months. Such a short statute of limitations is not "sufficiently generous in [its] time period[] to preserve the remedial spirit of federal civil rights actions." *Childers v. Independent School Dist.*, 676 F.2d 1338, 1343 (10th Cir. 1982) (quoting *Shouse v. Pierce County*, 559 F.2d 1142, 1146 (9th Cir. 1977)).

B.

In addition, while the equal protection clause is not designed to create uniformity out of political, economic,

and cultural diversity, it does command that the state treat every person with equal care and respect. When there is evidence that the state failed to accord such treatment, there is evidence that individuals' constitutional rights may have been violated. The decisions of courts seeking to vindicate these rights, as here, indicates that we are close to fulfilling Karl Llewellyn's prophecy of a half century ago:

> [T]he focus of study, the point of reference for all things legal has been shifting, and should now be consciously shifted to the area of contact, of interaction, between official regulatory behavior and the behavior of those affecting or affected by official regulatory behavior. . . .[5]

If, with Dean Eugene V. Rostow, we agree that the purpose of the Constitution is to assure the people a free and democratic society and that the final aim of that society is to provide as much freedom and equality as possible for individuals, we can also agree that there has been no procedural device in the modern era that has guaranteed those assurances more than the remedies available through §1983. This statute furnishes bone and sinew to what Dean Rostow described as the root idea of the Constitution: "man can be free because the state is not."[6] Desirable public policy, as evidenced by volumes of reported cases at all levels of the judiciary, is that the courthouse doors be open for, rather than closed to, the vindication of these individual rights alleged to have been threatened by official regulatory behavior.

Applying a six-month statute of limitations would have a decided tendency to severely limit access to the

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5. Llewellyn, *A Realistic Jurisprudence—The Next Step*, 30 Colum. L. Rev. 431, 464 (1930).

6. Rostow, *The Democratic Character of Judicial Review*, 66 Harv. L. Rev. 193, 195 (1952).

courts for the purpose of vindicating these individual rights. It would be counterproductive to the popular recourse to the Civil Rights Acts. And it also would fly in the face of Cardozo's admonition that "the final cause of law is the welfare of society. The rule that misses its aim cannot permanently justify its existence."[7]

C.

Even if application of the six-month limitations provision would not contravene the remedial spirit of the federal Civil Rights Acts, it would be inconsistent with the legislative history and subsequent judicial construction of those Acts. Section 1983 derives from § 1 of the Civil Rights Act of 1871. Act of April 20, 1871, ch. 22, §1, 17 Stat. 13. State action is required for it to become operative. Because §1983 represents only one section of the 1871 Act, however, it should not be considered *in vacuo*, and interpretive reference should be made to other relevant provisions, such as §2 of the Act, now codified as §1985(2),[8] which reaches private action. *See Griffith*, 403 U.S. at 96-101.

In considering the legislative history surrounding these two provisions of the 1871 Act,[9] we have unearthed no evidence that Congress intended one limitations period to apply to suits brought under §1, where state action is required, and another period to apply to §2 suits implicating private action. But if we apply the literal language of the new Pennsylvania statutes of limitations, that is exactly what results. Because government officials are uniformly defendants in §1983 suits, the six-month limitations provision of §5522(b)(1) would govern their causes of action; whereas a §1985(2) suit against a non-government defendant would always be subject to one of the other limitations provisions.

In addition to §§1983 and 1985, several other statutes comprise the remainder of the federal Civil Rights Acts. An examination of two of these statutes, 42 U.S.C. §1981[10] and 1982,[11] which, like §1985, reach private action, highlights the ananolous result that can stem from applying different statutes of limitations to suits involving private and public defendants.

Suits brought under §§1981 and 1982 against private defendants, like those brought under §1985, would never be subject to Pennsylvania's six-month statute of limitations. In fact, we have recently held that a claim based on §1981, charging a private employer with failure to protect an employee from harassment because of race, would be subject to a six-year statute of limitations.

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7. B. Cardozo, The Nature of the Judicial Process 66 (1921).

8. 42 U.S.C. §1985(2) punishes persons who, *inter alia*:

> conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

For the original draft of §2 of the Act of 1871 and a history of its subsequent codification by Secretary of State Hamilton Fish in 1874, see *Brauer v. Horowitz*, 535 F.2d 830, 837-41 (3d Cir. 1976).

9. *See e.g.*, The Reconstruction Amendments' Debates 484-570 (Va. Comm'n. on Const. Gov't 1967) (setting forth excerpts of the debates reprinted in the Congressional Globe, 42d Cong., 1st Sess. (1871)).

10. 42 U.S.C. §1981 provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

11. 42 U.S.C. §1982 provides:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Davis, 581 F.2d at 341. We also have held that a claim based on §§1981 and 1982, alleging a wrongful refusal to sell or rent housing, would be subject to a six-year limitations period. *Meyers*, 559 F.2d at 903. Even though these decisions pre-date the recodification of Pennsylvania's statutes of limitations, because they involve private defendants in discrimination actions that would not be covered by the more specific provisions of the new Code, the residuary six-year period of limitations would still apply were these suits instituted today under the new limitations schema.

We refuse to believe, however, that Congress intended to sanction the application of a six-year limitations period to federal civil rights actions involving housing or race discrimination where the parties were private citizens, but only a six-month statute of limitations to otherwise identical actions involving public officials. Such a result would be contrary to the statutory schema adopted in 1871 in which Congress addressed in one comprehensive statute both public and private discrimination. "It is abundantly clear that one reason [§1983] was passed was to afford a federal right in federal courts because . . . the claims of citizens to the enjoyment of the rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by state agencies." *Monroe*, 365 U.S. at 180. To constrict this right by imposing a six-month limitations statute where there are public defendants would, in our view, run completely counter to the intent of the 1871 Congress. Because we reject the application of the shorter limitations provision as violative of the policy and legislative history underlying §1983, we need not go on to address appellant's constitutional argument that applying different limitations provisions to government and nongovernment defendants violates her rights to equal protection. *See Ashwander v. TVA*, 297 U.S. 288, 341 (Brandeis, J., concurring).

D.

"We are not at liberty to seek ingenious analytical instruments" that would dilute the power of §1983 or the majesty of its objectives. *See Price*, 383 U.S. at 801. Accordingly, we hold that the district court erred in applying Pennsylvania's six-month statute of limitations to this §1983 action as a basis for granting appellee's summary judgment motion. The void created by Congress' failure to establish a statute of limitations for §1983 actions cannot be filled with a state limitations provision which is inconsistent with the federal interest sought to be vindicated. In addition, we conclude that Pennsylvania's residuary six-year statute of limitations, which applies in the absence of another applicable limitations provision, should govern this §1983 action because it "better serves the policies expressed in the federal statute[]." *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 240 (1969).

V.

We now turn to appellant's claim of employment discrimination based on a violation of Title VII. We first note that because a cause of action under §1983 is distinct and independent, and has different procedural, jurisdictional, and remedial characteristics from a Title VII action, that appellant has the right to proceed under both statutes. *Scott v. University of Del.*, 601 F.2d 76, 79 n.2 (3d Cir.), *cert. denied*, 444 U.S. 931 (1979). Moreover, the legislative history of Title VII supports "the clear inference . . . that Title VII was designed to supplement, rather than supplant, existing laws and institutions relating to employment discrimination." *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 48-9 (1974).

To affirm the district court's summary judgment order, we must determine that there existed no dispute as to any material fact and that defendants were entitled to judgment as a matter of law. *Goodman*, 534 F.2d at 573.

Neither this court on appeal nor the district court at trial is authorized, in approving a summary judgment order, to decide disputed issues of fact; our sole task is to determine whether an unresolved issue of material fact existed at the time the ruling was made. *Id.* Accordingly, we must view inferences from facts contained in the evidentiary materials submitted to the district court in the light most favorable to the party opposing the summary judgment motion. *Id.* That party's allegations must be taken as true and, when those assertions conflict with those of the movant, the former must receive the benefit of the doubt. *Id.*; see, e.g., *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)(per curiam); *Smith v. Pittsburgh Gage & Supply Co.*, 464 F.2d 870, 874 (3d Cir. 1972).

By its terms, Title VII requires that a charge be filed with the EEOC within 180 days of the alleged discriminatory act. This requirement operates as a statute of limitations, such that a complainant's failure to file within this period operates to bar relief in federal court on the merits. *Zipes v. Trans World Airlines, Inc.*, 50 U.S.L.W. 4238, 4240-41 (U.S. Feb. 24, 1982). The district court found that the last act of discrimination took place in July, 1979 when appellant's application for the post of Administrative Assistant was denied. We must decide, therefore, not whether this district court determination was correct, but whether in making it, the district court impermissibly resolved a disputed issue of materal fact.

Before us, appellant urges, as she did before the district court, that the appellees engaged in a continuing policy of discrimination. She contends that the school district committed three distinct acts of discrimination, to-wit, on August 2, 1979 when the male applicant Romano was hired as Administrative Assistant; on or about May 28, 1980 when the Superintendent notified her that he would not, as promised, create an administrative position for her during the next school year; and

in September 1980 when Romano was promoted to Assistant Superintendent. She maintains that appellees' policy of discrimination existed in 1979 and lasted through September, 1980.

In determining the motion for summary judgment, the district court had before it only plaintiff's complaint, her exhibits, the answer, the briefs, and its recollection of oral argument. The parties did not supply the court, and the materials furnished us do not disclose, any depositions, answers to interrogatories, and admissions on file, together with supporting affidavits, which are permitted in summary judgment procedures under Rule 56(e), F. R. Civ. P.

In her complaint plaintiff averred:

> 22. The decisions not to promote Plaintiff Knoll into an administrative position in July 1979, May 1980 and September 1980, were the result of a *continuing policy of discrimination* against Plaintiff on the basis of sex by the School District and its officers, agents and representatives acting within the scope of their authority and on behalf of the School District.

(Emphasis added). The defendants presented a general denial, but no countervailing facts to dilute her averment of a continuing policy of discrimination.

In the context of a summary judgment proceeding, we must accept as true plaintiff's averment that defendants maintained a continuous policy of discrimination that lasted into September, 1980. However, we do not hold that plaintiff proved her contention as to when the last discriminatory act occurred, only that whether that last act occurred in September 1980 is a material fact that was still in dispute at the time the district court granted the summary judgment motion. Thus, the district court erred when it determined that, as a matter of law, appellant's Title VII claim was time-barred. *See*

Reed v. Lockheed Aircraft Corp., 613 F.2d 757 (9th Cir. 1980).

VI.

Accordingly, we will reverse the summary judgment order of the district court and remand the cause for further proceedings.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MADELIN H. KNOLL	:	CIVIL ACTION
v.	:	
SPRINGFIELD TOWNSHIP	:	
SCHOOL DISTRICT, et al.	:	NO. 81-1626

MEMORANDUM OF DECISION

McGLYNN, J. March 17, 1982

This case raises questions concerning the effect of the Civil Rights Act of 1964 (hereinafter referred to as "Title VII") on the Civil Rights Acts of 1866 and 1871 (hereinafter individually referred to as "Sections 1981, 1983 and 1985"). In order to establish the proper foundation needed to discuss these issues, a brief recitation of the facts is in order.

Plaintiff, Madelin Knoll, has been employed by the defendant school district of Springfield Township as a full-time educational professional since 1968. In July of 1979 plaintiff applied for and was denied the position of administrative Assistant to the Superintendent of the School District. Mr. Frank Romano was given this position. According to plaintiff, the Superintendent orally promised to create a position for plaintiff to appease her for not being selected. In May 1980 plaintiff was informed that no new position had been created. In September 1980 Mr. Frank Romano was promoted to Assistant Superintendent.

On December 12, 1980 plaintiff filed a charge with the Equal Employment Opportunity Commission, (EEOC), claiming that she had been discriminated against with regard to the above positions because of her sex. The Commission dismissed the charge as untimely filed stating that the charge was received more than 180

days after the date of the alleged violation[1] and issued a right to sue letter.[2]

Though not expressly stated by the EEOC, it is implicit in its dismissal of the charge as untimely that the EEOC read plaintiff's charge as alleging that the most recent discriminatory act occurred in July or August 1979. Thus the filing of the charge in December 1980, almost a year and a half after the alleged act of discrimination was not within the 180 day filing period. Plaintiff claims however that the EEOC determination was incorrect because the last act of discrimination alleged in the charge took place in September 1980 when Romano appointed Assistant Superintendent and therefore the charge filed on December 1980 was within the 180 day period required by Title VII.

In addition to her Title VII claim, plaintiff brings a separate claim based on 42 U.S.C. §1983 alleging that the same operative facts violated her right to equal protection guaranteed by the Fourteenth Amendment.[3] Presently before the Court is Defendant's Motion for Summary Judgment on both claims.[4]

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1. Under Title VII, cases of alleged employment discrimination are subject to a detailed administrative and judicial process. (The Statute requires that a complaint be filed with the federal agency within 180 days "after the alleged unlawful employment practice occurred". If the complainant has filed a charge with a state or local agency, the time is extended to 300 days from the end of state or local proceedings, whichever is sooner. 42 U.S.C. §2000 e-5(c). In this case plaintiff has not averred that she instituted proceedings before a state agency, therefore the 180 days period applies.

2. After a right to sue letter issues from the EEOC the complainant is given another 90 days to bring a civil action in a federal district court, 42 U.S.C. §2000 e-5(f)(1), *United Air Lines, Inc. v. Evans*, 431 U.S. 553 (1977).

3. This court has jurisdiction pursuant to 28 U.S.C. §§1331 and 1343.

4. Although defendants contend the court lacks subject matter jurisdiction, in fact, they are asserting that the action is barred by the statute of limitations which, as an affirmative defense, may be raised by a motion for summary judgment.

Title VII

Whether Plaintiff's Charge of Sex Discrimination in Employment was Timely Filed with the EEOC

In *Zipes v. Trans World Airlines, Inc.*, 50 U.S.L.W. 4238 (decided February 24, 1982) the Supreme Court held that a timely filing of a charge with the EEOC is not a jurisdictional prerequisite to bringing a Title VII suit in federal district court, but is rather a requirement similar to a statute of limitations. Therefore if plaintiff did not file her claim with the EEOC within the 180 day filing period provided for in Title VII, her present claim must be dismissed.[5]

Plaintiff asserts that this Court is not bound by the EEOC determination that the claim was not timely filed. *Alleman v. T.R.W., Inc.*, 13 FEP 982 (M.D.PA. 1974); *Trent v. Allegheny Airlines, Inc.*, 431 F. Supp. 345 (W.D.Pa. 1977) and urges us to make an independent determination of timeliness.

The thrust of plaintiff's argument is that defendants engaged in a continuing policy of discrimination and therefore a charge which challenges that policy is timely filed so long as it is filed within 180 days of the latest act of discrimination. *Bethel v. Jendoco Construction Corporation*, 570 F.2d 1168 (3d Cir. 1978). The most recent act of discrimination in this case, according to plaintiff, took place in September 1980 when Romano was promoted to the position of Assistant Superintendent. Thus under plaintiff's analysis the charge filed in December of the same year was timely.

The problem with this theory is that the promotion of Romano in September 1980 did not discriminate against plaintiff. She had not even applied for that position. The crux of her claim is the denial by defendant of her application for the position of Administrative Assist-

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5. Plaintiff does not claim that waiver, estoppel or equitable considerations tolled the running of the limitations period.

ant in the summer of 1979. At that time of Mr. Romano was given the position which plaintiff sought. Plaintiff was discriminated against therefore, if at all, in 1979, not later in 1980 when Mr. Romano was elevated to a position for which plaintiff had not even submitted an application. While Romano may have been the beneficiary of the initial act of discrimination, changes in his status subsequent thereto do not start the running of the limitation period anew.

Therefore, I agree with the EEOC determination that plaintiff's charge was untimely filed. Accordingly, I grant defendant's motion as to plaintiff's Title VII Claim.[6]

1983

Whether the Dismissal of a Title VII Claim on the Ground That It Was Untimely Filed Precludes The Bringing of a Section 1983 Cause of Action Based On The Same Operative Facts

Defendants would have the court answer this question in the affirmative arguing that to do otherwise would allow plaintiff to circumvent the comprehensive procedural machinery of Title VII which was specifically enacted for employment discrimination cases. Defendants cite *Great American S. and L. Association v. Novotny*, 442 U.S. 366 (1979) in support of their stand. The plaintiff in *Novotny*, filed a charge with the EEOC and after receiving a right to sue letter filed suit in district court under Section 1985. After detailing the procedural plan devised by Congress for discrimination claims under Title VII, the Court stated "If a violation of Title VII could be asserted through §1985 (c) a complainant

6. This determination makes it unnecessary for the court to address the more specific issue raised by defendant concerning the barring of plaintiff's Title VII claim against the individual defendants for failure to name them as respondents in the EEOC complaint.

could avoid most if not all of these detailed and specific provisions of the law." *Id.* at 375-6. The court concluded that "[u]nimpaired effectiveness can be given to the plan put together by Congress in Title VII only by holding that deprivation of a right created by Title VII cannot be the basis for a cause of action under §1985(c)" *Id.* at 378.

Defendants argue that unlike §1981 which creates rights independent of Title VII (*Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975))[7], both §1983 and §1985 are purely remedial in nature and confer no substantive rights, and therefore plaintiff's §1983 claim ought to be barred for the same reason that *Novotny's* §1985 claim was barred.

Although the logic has surface appeal, it overlooks the fact that in *Novotny* the plaintiff was attempting to enforce a statutory right which prohibits sex discrimination in private employment while the plaintiff here is seeking redress for a Fourteenth Amendment equal protection violation. This plaintiff is not using §1983 to enforce Title VII but rather she seeks to recover damages for sex discrimination by persons acting under color of state law. This is an independent cause of action even though the underlying facts are the same and the potential remedies overlap a Title VII cause of action.

The interplay between Title VII and Section 1983 has not been directly addressed by the Supreme Court. However, the Third Circuit has consistently permitted plaintiffs to proceed under both Title VII and Section 1983. In *Scott v. University of Delaware*, 601 F.2d 76 (3d Cir. 1979) plaintiff "alleged individual claims of discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e *et seq.*, and the Civil Rights Act of 1866, 42 U.S.C. §1981, and 1871, 42

7. But see *Brown v. General Services Administration*, 425 U.S. 820 (1976) which holds that Section 1981 cannot be used to attack federal discriminatory employment practices.

U.S.C. §1983." *Id.* at 79. The Court in *Scott* stated that "the cause of action under each of the Civil Rights Acts are distinct and independent, and have different procedural, jurisdictional, and remedial characteristics." *Id.* at 79, n.2 citing *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975). In *Bolden v. Pennsylvania State Police*, 578 F.2d 912 (3d Cir. 1978) the Court dealt with a claim based only on the Thirteenth and Fourteenth Amendments and 42 U.S.C. Sections 1981, 1983, 1985(3) and 1988. The court noted that "Although the complaint was filed on November 16, 1973, it did not allege a violation of Title VII of the Civil Rights Act of 1964, PUB. L. NO. 88-352, 78 Stat. 255, 42 U.S.C. §2000-e *et seq*. Apparently, the reason for this was the exemption for state and local governments originally incorporated in Title VII and not removed until March 24, 1972, the effective date of the Equal Employment Opportunity Act of 1972 PUB. L. NO. 92-261, 86 Stat. 103." *Id.* at 914 n.1.

District Courts likewise have determined that Section 1983 and Title VII afford parallel remedies. In *Johnson v. University of Pittsburgh*, 435 F. Supp. 1328 (W.D. Pa. 1977), the court characterized the case as a "double-barrelled suit brought under 42 U.S.C. §2000e forbidding sex discrimination and under the Civil War Civil Rights Acts, 42 U.S.C. §§1983 and 1985(3)." *Id.* at 1350. In *Morgan v. Sharon Pennsylvania Board of Education*, 472 F. Supp. 1157 (W.D. Pa. 1979) a school teacher brought suit against the school district alleging a claim of sex discrimination. Count one was based on Title VII and count two was based on Section 1983. Addressing the difference in the limitations afforded by both statutes the court stated:

> "It may seem paradoxical that plaintiff in Count two can rely upon alleged acts of discrimination which are foreclosed under Count one because of the shorter period provided by Title VII. *Congress, however, did not make the remedies under Title VII and Section 1983 mutually exclusive.* Plaintiff is therefore entitled to pursue relief under both counts, with each count governed by its own procedural standards."

Morgan v. Sharon Pennsylvania Board of Education, supra, at 1159 n.1 (emphasis added and citations omitted).

I would conclude therefore that even though §1983 is more akin to §1985, *Johnson* is controlling and the *Novotny* analysis must be rejected. "The legislative history of Title VII manifests a Congressional intent to allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes." *Alexander v. Gardner-Denver Company*, 415 U.S. 36, 48 (1974). Thus a judgment in favor of defendants on plaintiff's Title VII claim as time barred does not compel the dismissal of the Section 1983 claim.

Whether the Complaint States a Cause of Action Against the Springfield Township School District

This action was brought against the Springfield Township School District as well as the individual members of the District's School Board. There are no allegations that the plaintiff's failure to obtain the desired promotion resulted from the execution of the District's custom or policy. In *Monell v. Department of Social Services*, 436 U.S. 658 (1978), the court specifically refused to impose Section 1983 liability on the basis of respondeat superior stating:

> "We conclude, therefore, that a local government may not be sued under §1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official

policy, inflicts the injury that the government as an entity is responsible under §1983."

Id. at 695. Accordingly, plaintiff's §1983 claim against the Springfield Township School District will be dismissed.

Whether Plaintiff's §1983 Claim Against the Individual Members of the School Board Was Brought Within the Appropriate Statute of Limitations

There is no federal statute of limitations for actions brought under 42 U.S.C. §1983, see *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975), therefore "the limitation to be applied is that which would be applicable in the courts in the state in which the federal court is sitting had an action seeking similar relief been brought under state law". *Polite v. Diehl*, 507 F.2d 119, 122 (3d Cir. 1974) (en banc): *See Meyers v. Pennypack Woods Home Ownership Association*, 559 F.2d 894, 900 (3d Cir. 1977).

The defendant school board members contend that plaintiff's claim would be barred by the six-month limitation period of 42 Pa. Cons. Stat. Ann. §5522(b)(1) which reads:

> (b) Commencement of action required — The following actions and proceedings must be commenced within six months:
>
> (1) An action against any officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this subchapter.

Id. The discriminatory conduct alleged in the complaint occurred in July or August 1979. Plaintiff did not commence this action until April 21, 1981, well beyond the six-month period of §5522(b)(1) and thus the defendants argue that plaintiff's claim against them should be dismissed.

Plaintiff contends that the six year statute of limitations contained in 42 PA. CONS. STAT. ANN. §5527(6) is applicable citing *Riddick v. Cuyler*, No. 81-0246, (E.D.Pa. filed July 16, 1981, per Newcomer, J.).

However, in *Clyde v. Thornburgh, et al.*, CA 81-1910 (E.D.Pa. filed Feb. 18, 1982, per Luongo, J.) a political discharge case, the court rejected the *Riddick* analysis and applied the six-month limitation of §5522(b)(1). The court reasoned that cases dealing with torts which interfere with another's economic rights or interests looked to the residuary provisions of Pennsylvania's limitations scheme and where the claim is against an officer of a government unit for action taken in the execution of his office the clear language of §5522(b)(1) compels the imposition of the six month limitation period. The court also pointed out that the restrictive view of *Riddick* which would apply §5522(b)(1) only to actions for injury to person and property would render that provision superfluous.

I am persuaded that the *Clyde* approach is correct and that "§5522(b)(1) represents the legislature's considered judgment that actions against public officials which are so uncommon that they do not fall within other specific limitations periods, should be brought within six months." *Clyde*, supra at 18.

Accordingly, since the §1983 action was not commenced against the individual members of the school board within six months of the constitutional violation it is barred.[8]

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8. This would be true even assuming the act of discrimination was the promotion of Romano to Assistant Superintendent in September 1980.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MADELIN H. KNOLL	:	CIVIL ACTION
v.	:	
SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, et al.	:	NO. 81-1626

ORDER

AND NOW, this 17th day of March, 1982, upon consideration of the defendants' motion for summary judgment and after consideration of the briefs and arguments of counsel, it is

ORDERED

that the motion for summary judgment be and the same is hereby GRANTED AND JUDGMENT is entered in favor of the defendants and against the plaintiff.

BY THE COURT

JOSEPH L. McGLYNN, JR. J.

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 82-1241

KNOLL, MADELIN H., *Appellant*

v.

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a political subdivision of the Commonwealth of Pennsylvania; ROMAN, LOUIS A., Superintendent, Springfield Township School District; LAWN, JOHN J., HANSHAW, MARIE M., COMMINS, JAMES A., GOREN, SARA LEE, HOCH, WILLIAM C. JR, HOGUE JR., E. BURKE, KALISH, SALLY, LIEBERMAN, MAX L. and TOBIN, HARPUR M., individually and as members of the Board of School Directors Springfield Township School District

(D.C. Civil 81-1626)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: ALDISERT, GIBBONS and HIGGINBOTHAM, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania submitted under Third Circuit Rule 12(6), January 6, 1983.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered March 19, 1982, be, and the same is hereby reversed and the cause remanded for further proceedings. Costs taxed against appellees.

ATTEST:

Sally Mrva

Clerk

January 27, 1983

Certified as a true copy and issued in lieu of a formal mandate on March 3, 1983.

Test:

Chief Deputy Clerk, United States Court of Appeals for the Third Circuit.

Costs taxed in favor of appellant as follows:

Brief	$143.37
Appendix	$ 50.49
Reply Brief	$ 19.80
TOTAL	$213.66

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-1241

KNOLL, MADELIN H.,

Appellant

v.

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a political subdivision of the Commonwealth of Pennsylvania; ROMAN, LOUIS A., Superintendent, Springfield Township School District; LAWN, JOHN J., HANSHAW, MARIE M., COMMINS, JAMES A., GOREN, SARA LEE, HOCH JR., WILLIAM C., HOGUE JR., E. BURKE, KALISH, SALLY, LIEBERMAN, MAX L. and TOBIN, HARPUR M., individually and as members of the Board of School Directors, Springfield Township School District

(D.C. Docket No. 81-1626)

SUR PETITION FOR REHEARINNG

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER and BECKER, *Circuit Judges*

The petition for rehearing filed by Appellees in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, a majority of the circuit

judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

Judges Adams, Weis, Garth and Hunter would grant rehearing in banc.

BY THE COURT,

JOHN J. GIBBONS
Circuit Judge

Dated: February 23, 1983

STATEMENT OF JUDGE ADAMS SUR DENIAL OF PETITION FOR REHEARING

The panel decides that the six-month limitations period of 42 Pa. Cons. Stat. Ann. §5522(b)(1) (Purdon 1981) is inapplicable to actions brought under 42 U.S.C. §1983, because six months is so brief as to be inconsistent with the policies of section 1983. This position is taken despite the panel's recognition that in section 1983 actions the federal courts must normally borrow the state limitations period governing analogous causes of action, and that, had the present action been brought "in state court under state law, it would have been subject to the six-month limitations period." Slip op. at 8.

In holding that the six-month period is too constricting, the panel breaks with the two other circuits that have decided this issue. In *Burns v. Sullivan*, 619 F.2d 99, 106-107 (1st Cir. 1980), the court held that a six-month limitation is reasonable in section 1983 cases, and *Warren v. Norman Realty Co.*, 513 F.2d 730, 733-35 (8th Cir. 1975), applied a 180 day limit of a Nebraska statute of limitations to a federal action under 42 U.S.C. §1982.[1]

1. In *Major v. Arizona State Prison*, 642 F.2d 311 (9th Cir. 1981) the Ninth Circuit determined that a one year statute was not inconsistent with section 1983. *But cf. Childers v. Independent School District No. 1 of Bryan County, State of Oklahoma*, 676 F.2d 1334 (10th Cir. 1982), which held a 120 day limitations period for nonjudicial proceedings to be inconsistent with section 1983. In *Johnson v. Davis*, 582 F.2d 1316, 1319 (4th Cir. 1978), the court disregarded a special one year state statute of limitations for section 1983 actions in favor of the two year period of the general state statute, because of the absence of a "fair grouping and valuation of §1983 actions within the Virginia scheme of limitation periods [and because of the absence of] some other reasonable basis for applying a shorter period for remedying a 'constitutional tort' than for remedying the underlying state tort. . . ." The *Johnson* court held that to apply the special statute would be to "condone an unreasonable discrimination between the assertion of federally protected rights and rights under Virginia law," *id.* at 1317. The panel in the present case, however, does not suggest that the Pennsylvania six-month statute discriminates against federal rights. *See also Shouse v. Pierce County*, 559 F.2d 1142, 1146 (9th Cir. 1977) (refusing to borrow a 30 day period).

As the panel notes, this Court is not authorized to cure lacunae in federal law by borrowing state statutes of limitations that frustrate national policies. *See Occidental Life Insurance Co. v. EEOC*, 432 U.S. 355, 367 (1977). But in its most recent declaration on the subject, the Supreme Court warned that state statutes of limitations are normally binding in section 1983 cases:

> In §1983 actions . . . a state statute of limitations and the coordinate tolling rules are more than a technical obstacle to be circumvented if possible. In most cases they are binding rules of law. In 42 U.S.C. §1988, Congress "quite clearly instructs [federal courts] to refer to state statutes" when federal law provides no rule of decision for actions brought under §1983. *Robertson v. Wegmann*, 436 U.S. 584 (1978). See also *Carlson v. Green*, [446 U.S. 14, 22 n.10 (1980)]. As we held in *Robertson*, by its terms, §1988 authorizes federal courts to disregard an otherwise applicable state rule of law only if the state law is "inconsistent with the Constitution and laws of the United States."

Board of Regents of the University of the State of New York v. Tomanio, 446 U.S. 478, 484-85 (1980) (footnote omitted).

The Supreme Court in *Tomanio* took occasion to reiterate its emphasis on "the importance of the policies underlying state statutes of limitations." *Id.* at 487. To gauge whether state limitations statutes are consistent with the policies underlying section 1983, *Tomanio* instructed the federal courts that "the state and federal policies which the respective legislatures sought to foster must be identified and compared." *Id.* at 487.

There is no indication that the opinion in the present case follows *Tomanio*'s direction to give weight to the significant policies underlying the state statute of limitations. Moreover, despite its description of the general policies behind section 1983, the panel has not explained with any precision why the six-month period cannot be squared with those policies. Indeed, much of the same reasoning that the panel employs in rejecting the limitations period of section 5522(b)(1) could equally be applied to strike down any limitations period, for any such period arguably circumscribes the broad sweep of section 1983. The panel has made no attempt to demonstrate with specific reference to the facts of this case that six months was insufficient for the plaintiff to file a complaint. Instead, without citing any evidence or empirical data, it speaks of this period as being too limited for the "average plaintiff." Slip op. at 10.[2] The panel does

2. It is worth noting that when Congress has prescribed periods for the filing of charges under civil rights statutes, it has sometimes chosen a limit of 180 days. *See* 42 U.S.C. §2000e-5(e) (§706(e) of Title VII of the Civil Rights Act of 1964, as amended); 42 U.S.C. §3610(b) (§810 of Title VIII of the Civil Rights Act of 1968). I recognize, of course, that it may require more time to prepare a complaint to be filed in federal district court than to bring a charge with the Equal Employment Opportunity Commission under 42 U.S.C. §2000e-5 or with the Secretary of Housing and Urban Development under 42 U.S.C. §3610. On the other hand, the federal rules permit liberal amendments of complaints brought in district court, and so a time limit on federal complaints may not be as burdensome as it seems.
In the present case the same facts that give rise to the plaintiff's section 1983 action also form the basis of her Title VII claim. The panel does not explain why Congress, although giving the plaintiff only six months to file her Title VII charge with the EEOC, could not have intended for the federal courts to borrow a six-month statutes of limitation to bar the plaintiff's section 1983 action.

not even rely on the special nature of employment discrimination cases; it appears to indicate that six months is too short in *all* types of section 1983 actions. Thus the panel seemingly would make it impossible to borrow a six-month statute even in section 1983 actions that easily could be commenced within six months. I cannot see why, for example, a prisoner alleging that the warden improperly deprived him of some of his property could not be expected to file a complaint within six months. Yet a large proportion of section 1983 actions are brought by prisoners making allegations such as this.

In sum, I believe that this case warrants rehearing before the entire court because it appears that the panel, in disregard of *Tomanio*, neither considered the state policies involved nor identified with any specificity the federal policies, and also because I am concerned about the creation of a split among the circuits on this highly important issue.

Judges Hunter, Weis, and Garth join in this statement.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MADELIN H. KNOLL, Plaintiff	:	
	:	
v.	:	
	:	
SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a political subdivision of the Commonwealth of Pennsylvania;	:	CIVIL
LOUIS A. ROMAN, Superintendent, Springfield Township School District;	:	ACTION
JOHN J. LAWN, MARIE M. HANSHAW, JAMES A. COMMINS, SARA LEE GOREN, WILLIAM C. HOCH, JR., E. BURKE HOGUE, JR., SALLY KALISH, MAX L. LIEBERMAN, and HARPUR M. TOBIN, individually and as members of the Board of School Directors, Springfield Township School District, Defendants	:	NO. 81-1626

COMPLAINT

Plaintiff, Madelin H. Knoll, by her attorneys, Kirschner, Walters & Wilig, as and for a Complaint in the above-captioned matter, hereby states to the Court as follows:

Preliminary Statement

1. This is an action under 42 U.S.C. §1983 and Title VII of the Civil Rightrs Act of 1964, *as amended*, 42 U.S.C. §2000e *et seq.*, to remedy employment discrimination on the basis of sex and under color of state law. In September; 1980, Piaintiff Madelin Knoll was denied consideration for the post of Assistant Superintendent of the Springfield Township School District. The job in fact went to a male teacher with less qualifications than Plaintiff. The decision not to promote Ms. Knoll is merely the last in a series of discriminatory practices against

Plaintiff by Defendants. Plaintiff seeks declaratory and injunctive relief, as well as compensatory and punitive damages.

Jurisdiction

2. This action arises under Section 703 of the Civil Rights Act of 1964, 78 Stat. 260 *as amended*, 86 Stat. 104-105, 42 U.S.C. §2000e-2 (hereinafter "Title VII"), 42 U.S.C. §1983, and the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1343, 2201, 2202, and 42 U.S.C. §2000e-5(f)(3).

Parties

3. Plaintiff, Madelin H. Knoll, is an adult female citizen of the United States, with her principal residence at 1432 Fort Washington Avenue, Ambler, Pennsylvania 19002. At all times relevant to this Complaint, Plaintiff has been an employee of Defendant within the meaning of Section 701(f) of the Act, 42 U.S.C. §2000e(f).

4. Defendant, Springfield Township School District (hereinafter "the School District"), is a political subdivision of the Commonwealth of Pennsylvania which exists for the purpose of providing education to children in that area. Its principal place of business is 1901 East Papermill Road, Oreland, Pennsylvania 19075. The Schoo! District is an employer within the meaning of Section 701(b) of the Act, 42 U.S.C. §2000e(b).

5. Defendant, Louis A. Roman, is Superintendent of Defendant School District and resides at 1204 St. Clair Road, Oreland, Pennsylvania 19075. He is being used individually and in his official capacity.

6. Defendant, John J. Lawn, is President of the Board of School Directors of Defendant School District and resides at 700 Avondale Road, Erdenheim, Pennsylvania 19118. He is being sued individually and in his official capacity.

7. Defendant, Marie M. Hanshaw, is Vice-President of the Board of School Directors of Defendant School District and resides at 422 Oreland Mill Road, Oreland, Pennsylvania 19075. She is being sued individually and in her official capacity.

8. Defendant, James A. Commins, is a member of the Board of School Directors of Defendant School District and resides at 7708 Orchard Way, Wyndmoor, Pennsylvania 19118. He is being sued individually and in his official capacity.

9. Defendant, Sara Lee Goren, is a member of the Board of School Directors of Defendant School District and resides at 1904 Quill Lane, Oreland, Pennsylvania 19075. She is being sued individually and in her official capacity.

10. Defendant, William C. Hoch, Jr. is a member of the Board of School Directors of Defendant School District and resides at 1004 Cromwell Road, Wyndmoor, Pennsylvania 19118. He is being sued individually and in his official capacity.

11. Defendant, E. Burke Hogue, Jr., is a member of the Board of School Directors of Defendant School District and resides at 309 Willow Road, Oreland, Pennsylvania 19075. He is being sued individually and in his official capacity.

12. Defendant, Sally Kalish, is a member of the Board of School Directors of Defendant School District and resides at 8812 Hawthorn Lane, Wyndmoor, Pennsylvania 19118. She is being sued individually and in her official capacity.

13. Defendant, Max L. Lieberman, is a member of the Board of School Directors of Defendant School District and resides at 311 Longfield Road, Erdenheim, Pennsylvania 19118. He is being sued individually and in his official capacity.

14. Defendant, Harpur M. Tobin, is a member of the Board of School Directors of Defendant School District and resides at 200 Suffolk Road, Flourtown, Pennsylvania 19031. He is being sued individually and in his official capacity.

Factual Allegations

15. Plaintiff Knoll has been employed as a full-time educational professional by Defendant since 1968. During that time, she has served as Reading Consultant to the School District, reading resource teacher, ESEA Title I reading teacher in the parochial schools, and third grade teacher. As Reading Consultant, Plaintiff occupied a central administrative position.

16. Plaintiff Knoll was awarded a Doctorate degree in education from Temple University, Philadelphia, Pennsylvania in 1968. She has been certified by the Pennsylvania Department of Education as qualified to be an elementary teacher, reading specialist, supervisor of reading and elementary principal in the public schools in the Commonwealth of Pennsylvania. Plaintiff has further been certified and awarded a letter of eligibility from the Pennsylvania Department of Education to be a District Superintendent.

17. In July, 1979, Plaintiff Knoll applied for a vacancy as Administrative Assistant to the Superintendent of the School District. Plaintiff was fully qualified and certified for the position.

18. On or about August 2, 1979, Plaintiff was notified by Superintendent Louis A. Roman that she had not been selected as Administrative Assistant. Instead, the position went to Frank Romano, a male applicant, with less qualifications for the position and who, at that time, was not appropriately certified by the Pennsylvania Department of Education.

19. In August 1979, Superintendent Roman promised Plaintiff Knoll that he would create an administrative position for her during the school year 1979-80, as compensation for not having chosen her for the position of Administrative Assistant. Nevertheless, no such position was created. On or about May 28, 1980, Superin-

tendent Roman notified Plaintiff Knoll by letter that he woud not, in fact, create such a position for her during the school year 1980-81.

20. In September 1980, Administrative Assistant Frank Romano was promoted to Assistant Superintendent, a position which had existed in the past but was recreated at that time.

21. Although Defendant School District, its officers, agents and representatives, knew that Plaintiff Knoll was ready, willing, able and qualified to assume the position of Assistant Superintendent in September 1980, she was not offered an opportunity to compete for the vacancy and was not considered for same because of her sex.

22. The decisions not to promote Plaintiff Knoll into an administrative position in July 1979, May 1980 and September 1980, were the result of a continuing policy of discrimination against Plaintiff on the basis of sex by the School District and its officers, agents and representatives acting within the scope of their authority and on behalf of the School District.

23. The decisions not to promote Plaintiff Knoll were made by all of the individually named Defendants acting separately and together under color of state statute, ordinance, regulation, custom, and/or usage, to deprive Plaintiff of her rights, privileges and immunities as secured by the laws and Constitution of the United States.

24. Defendant School District employs approximately seven persons in top administrative, supervisory positions. Only one of these persons is a female.

25. As a result of Defendants' illegal and discriminatory acts, Plaintiff has been unable to advance her professional career and has suffered a resultant loss of salary, financial benefits, status and prestige, and further opportunities for professional advancement. Plaintiff has further suffered embarrassment, emotional duress, and mental pain and anguish.

26. As a result of Defendants' illegal and discriminatory conduct, Plaintiff has suffered immediate and irreparable harm for which there is no adequate remedy at law.

27. On or about December 12, 1980, Plaintiff filed a charge with the Philadelphia Office of the Equal Employment Opportunity Commission, alleging discrimination by the School District in the manner set forth in Paragraphs 15 through 25, above. A copy of that charge is attached hereto as Exhibit "A".

28. On or about January 28, 1981, the Equal Employment Opportunity Commission issued Plaintiff a Right to Sue letter in this matter, a copy of which is attached hereto as Exhibit "B".

29. Plaintiff has exhausted her administrative remedies as prescribed by law and has met the jurisdictional prerequisites to a Title VII action.

FIRST CAUSE OF ACTION

30. By its actions as described in Paragraphs 1 through 29, *supra*, the Springfield Township School District has discriminated against Plaintiff on the basis of sex, in violation of Section 703 of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. §2000e-2.

SECOND CAUSE OF ACTION

31. By their actions as described in Paragraphs 1 through 29, *supra*, Defendants have jointly and severally acted under color of state law to deny Plaintiff the equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution, in violation of 42 U.S.C. §1983.

WHEREFORE, Plaintiff prays that this Court:

1. Enter a declaratory judgment that Defendant's failure and refusal to promote Plaintiff was

caused by employment discrimination on the basis of sex, in violation of 42 U.S.C. §1983 and Section 703 of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. §2000e, *et seq.*;

2. Issue an Order permanently enjoining Defendants, their officers, agents and representatives, from discriminating against Plaintiff on the basis of sex, and ordering Defendant to hire Plaintiff at an administrative position, comparable to that of Assistant Superintendent, for which she is qualified;

3. Award Plaintiff equitable restitution, compensatory and punitive damages in an amount in excess of Ten Thousand Dollars ($10,000.00), together with all costs and attorneys fees incurred by Plaintiff in her attempt to vindicate her rights; and

4. Grant such other and further relief as the Court deems just and necessary.

Dated this 21st day of April, 1981.

KIRSCHNER, WALTERS & WILLIG

BY: _____

Theodore M. Lieverman
Attorneys for Plaintiff
1429 Walnut Street
Philadelphia, PA 19102
(215) 665-2722

(PLEASE PRINT OR TYPE)

ROVED BY GAO
- 180541 (R0511)
pires 1-31-81

CHARGE OF DISCRIMINATION

IMPORTANT: This form is affected by the Privacy Act of 1974, see Privacy Act Statement on reverse before completing it.

CHARGE NUMBER(S) (AGENCY USE ONLY)

☐ STATE/LOCAL AGENCY

☐ EEOC 09810642

ual Employment Opportunity Commission and
(State or Local Agency)

AME (Indicate Mr., Ms. or Mrs.)
Ms. Madelin Knoll

HOME TELEPHONE NUMBER (Include area code)
215-646-6214

REET ADDRESS
1432 Fort Washington Avenue

COUNTY
Montgomery

TY, STATE, AND ZIP CODE
Ambler, Pa. 19002

AMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR OCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME. (If more than one list below).

AME
Springfield Township School District

TELEPHONE NUMBER (Include area code)
215-233-6000

REET ADDRESS
1901 E. Paper Mill Road

CITY, STATE, AND ZIP CODE
Oreland, Pa. 19075

AME

TELEPHONE NUMBER (Include area code)

REET ADDRESS

CITY, STATE, AND ZIP CODE

USE OF DISCRIMINATION BASED ON MY (Check appropriate box(es))

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ OTHER (Specify)
female

ATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK ACE (Month, day, and year)
September 1980

E PARTICULARS ARE:

I was hired by Respondent in 1968. In July 1979, I applied for a position as Administrative Assistant. I was not selected for the position. In August 1979, Respondent promised to create an administrative position for me. On May 28, 1980, I was informed that no position would be created for me. Because I was denied the position of Administrative Assistant, coupled with Respondent's failure to create an administrative position for me, as promised, I was denied the opportunity to be considered for the position of Assistant Superintendent in September 1980.

I was informed by Lou Roman, Superintendent, that an administrative position would be created for me. Respondent gave no reason for not creating the administrative position.

I believe that I have been discriminated against because of my sex, female, for the following reasons:

1. In July 1979, I applied for a position as Administrative Assistant. I was fully qualified and certified for the position. Frank Romano (M), who was not certified, was selected for the position as Administrative Assistant.

2. In August 1979, Lou Roman, Superintendent, orally promised to create an administrative position for me during school year 1979-80.

3. On May 28, 1980, I was informed by a letter from Mr. Roman that no new administrative position had been created for would there be one created during school year 1980-81.

will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

declare under penalty of perjury that the foregoing is true and correct.

NOTARY — (When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

EXHIBIT "A"

ATE
CHARGING PARTY (Signature)

EEOC FORM 5 (5-78) PREVIOUS EDITIONS OF ALL EEOC FORM 5S ARE OBSOLETE AND MUST NOT BE USED

RESPONDENT'S COPY

A-43

BEST AVAILABLE COPY

E OF DISCRIMINATION	CHARGE NUMBER(S) AGENCY USE ONLY
	STATE/LOCAL AGENCY
	EEOC 03810642

ging Party --- Knoll

ondent ----- Springfield Township School District.

4. In September 1980, Frank Romano, Administrative Assistant, was promoted to Assistant Superintendent.

5. It is my belief that had I been selected for the position of Administrative Assistant in July 1979, I would have been promoted to Assistant Superintendent in September 1980.

6. Respondent employs approximately seven (7) employees in top administrative positions of whom only one (1) is female.

I declare under penalty of perjury that the foregoing is true and correct.

Date

Signature (Charging Party)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE
(Dismissal)

TO:
Ms. Madeline Knoll
1432 Fort Washington Avenue
Ambler Pa. 19002

FROM:
Equal Employment Opportunity Commission
Philadelphia District Office
127 North Fourth Street
Philadelphia, Pennsylvania 19106

Charge Number	EEOC Representative	Telephone Number
031810642	Legal Unit	215-597-0881

(See Section 706(f)(1) and (f)(3) of the Civil Rights Act of 1964 on reverse of this form.)

This is your NOTICE OF RIGHT TO SUE. It is issued because the Commission has dismissed your charge. Your charge was dismissed for the following reason:

☒ No jurisdiction, therefore the Commission has no authority to process your charge further.

☐ No reasonable cause was found to believe that the allegations made in your charge are true, as indicated in the attached determination.

☐ You failed to provide requested necessary information, failed or refused to appear or be available for necessary interviews/conferences or otherwise refused to coperate to the extent that the Commission has been unable to resolve your charge. You have had more than 30 days in which to respond to our final written request.

☐ The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to your last known address.

☐ The respondent has made a written settlement offer which affords full relief for the harm you alleged. At

least 30 days have expired since you received actual notice of this settlement offer.

The issuance of this NOTICE OF RIGHT TO SUE terminates the Commission's processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in United States District Court. IF YOU DECIDE TO SUE, YOU MUST DO SO WITHIN NINETY (90) DAYS FROM THE RECEIPT OF THIS NOTICE OF RIGHT TO SUE; OTHERWISE YOUR RIGHT TO SUE IS LOST.

If you cannot afford or have been unable to obtain a lawyer to represent you, you should be aware that the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(f)(1) permits the U. S. Distrit Court having jurisdiction in your case to appoint a lawyer to represent you. If you plan to request apointment of a lawyer to represent you, you must make this request of the U. S. District Court in the form and manner it requires. *Your request to the U. S. District Court should be made well in advance of the end of the 90-day period mentioned above.*

You may contact the EEOC representative named above if you have any questions about your legal rights including advice on which U. S. District Court has jurisdiction to hear your case or if you need to inspect and copy information contained in the Commission case file.

An information copy of this Notice of Right to Sue has been sent to the respondent(s) shown below.

On Behalf of the Commission

January 28, 1981 — Johnny J. Butler, District Attorney

(Date) — *(Typed Name and Title of EEOC Official)*

cc: Springfield Township School District
Theodore M. Lieverman, Esq.
Charles Potash, Esq.

EXHIBIT "B"

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PHILADELPHIA DISTRICT OFFICE
127 N. FOURTH STREET
PHILADELPHIA, PENNSYLVANIA 19106

031810642	Charge Number:
Madelin Knoll	Charging Party
and	
Springfield Township School District	Respondent

DISMISSAL

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission, the following determination dismissing the charge because it was untimely filed.

A charge of discrimination such as this must be filed within 180 days after the alleged violation. This charge was received more than 180 days after the date of the alleged violation. I dismiss the charge because it was untimely filed. Thus I make no determination as to whether or not Respondent actually engaged in unlawful conduct under Title VII as alleged in the charge. Such determination may be made by the Commission only with respect to charges filed within the time limitation set in Title VII.

This dismissal concludes the Commission's processing of this charge. Should the Charging Party wish to pursue this matter further, one may do so by filing a private action in Federal District Court against the Respondent named above within 90 days of receipt of this

letter and by taking the other procedural steps set out in the enclosed NOTICE OF RIGHT TO SUE.

On behalf of the Commission

Johnny J. Butler
District Director

1/22/81
(date)

Enclosures: (2)
Notice of Right to Sue
Copy of the Charge

6127

No. 82-1889

Office - Supreme Court, U.S.
FILED
JUN 21 1983
ALEXANDER L. STEVAS.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT,
A POLITICAL SUBDIVISION OF THE
COMMONWEALTH OF PENNSYLVANIA, ET AL.,
Petitioners,

v.

MADELIN H. KNOLL,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF THE STATE OF MARYLAND AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

30pp

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No. 82-1889

THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT,
a political subdivision of the
Commonwealth of Pennsylvania, et al.,

Petitioners

v.

MADELIN H. KNOLL

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF THE STATE OF MARYLAND AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The State of Maryland, by its Attorney General, submits this brief amicus curiae in support of Springfield Township School District's petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in

Knoll v. Springfield Township School District, 699 F.2d 137 (3rd Cir. 1983).

INTEREST OF AMICUS CURIAE

In this case involving a state employee's employment dispute brought in federal court pursuant to 42 U.S.C. §1983, the court below refused to apply the six month statute of limitations which it conceded the state court would have applied. Since a number of states have a statute of limitations of less than one year that could be applied in federal civil rights actions, see Petition for Writ of Certiorari at 11, n. 13, this holding, if left undisturbed, will clearly have a far reaching impact.

The State of Maryland not only has several statutes and regulations containing such an abbreviated limitations period, Md.

Code Article 49B §9A (Employment Discrimination Complaints) and Article 64A §33 and §§52-54 (State Employees Discharges and Grievances); COMAR .06.01.01.60-61 but it also has a number of other statutes which require that public employees' employment disputes be promptly resolved. See e.g., Md. Code Article 27 §§721 and 734 (Law Enforcement Officers); Education Article §6-202 (Teachers and Principals); §13-1A-01 et seq (University of Maryland Employees), §14-110 (Board of Trustees of State Universities and College Employees).

Moreover, well established in the common law of Maryland and other states and indeed this Court, is a requirement that a public employee assert his employment dispute in court in an expeditious fashion. See Duffey v. Rickard, 194 Md. 228, 71 A.2d. 41 (1950) and case cited therein. Pending before the Court of Appeals of the Fourth Circuit at

this time is a case from Maryland relying on these statutes, regulations and common law which raise many of the issues involved in this case at hand. Grattan v. Burnett, No. 82-1924 (4th Cir. Argued March 10, 1983).

Accordingly, if the decision below is allowed to stand,[1/] it could mean that Maryland's clear and pervasive state policy of prompt resolution of public employment disputes evidenced by statutes, regulations and the case law could be thwarted each and every time such cases are brought in federal court. For this reason, the State of Maryland has a very special interest in the resolution of this case.

[1/] The Third Circuit, relying on the case at hand, has recently refused to apply the six month limitations period in a §1983 prisoner's suit, see Swyka v. Johnson, 699 F.2d. 675 (3rd. Cir. 1983), petition for cert filed, No. 82-1928 (May 19, 1983) even though those judges dissenting from the denial of rehearing en banc, here noted that even if the panel's decision was correct that this case could not practically be brought within six months, "a prisoner alleging that the warden improperly deprived him of some property" surely could bring suit within this period. 699 F.2d. at 147.

REASONS FOR GRANTING REVIEW

I

This Court Should Review The Lower Court's Refusal To Adopt The Statute Of Limitations Which It Conceded Would Have Been Applied By The State Courts Since This Holding Is Based On Reasons Contrary To The Teachings Of This Court

Since Congress "did not establish a statute of limitations" for actions brought under 42 U.S.C. §1983, federal courts are generally to borrow the "state statute of limitations governing an analogous cause of action." Board of Regents of the University of the State of New York v. Tomanio, 446 U.S. 478, 484 (1980) (hereafter "Tomanio"). See also, Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 462 (1975). In most cases the most analogous state statute of limitations is the "binding rule of law" in §1983 actions, which can be disregarded only if "inconsistent with the Constitution and

laws of the United States." Tomanio, supra, 446 U.S. at 484-5. In order to "gauge inconsistency," a court must identify and compare the "federal and state policies which the respective legislatures sought to foster." Tomanio, supra, 446 U.S. at 487.

While the court below purported to recognize these principles as controlling, in fact it failed to follow them and so reached a result clearly at odds with the teachings of this Court. The lower court specifically held that Pennsylvania's six month statute of limitations would have been applied if this case had been brought in state court, i.e. that statute was the "most analogous." It refused to apply the Pennsylvania statute because it found application of that statute would contravene the remedial purpose of federal civil rights actions and "deny appellant the breadth of §1983's sweep." However, in reaching this conclusion, it

totally failed to engage in the identification and comparison of the competing state and federal policies as this Court mandated in Tomanio.

First, the Third Circuit simply ignored what this Court has "emphasized" are the important policies "underlying state statutes of limitations." Tomanio, supra, 446 U.S. at 487. These policies are of particular importance in this case involving, as it does, the legitimate and long-recognized state requirement that its employees promptly assert and resolve employment disputes. Yet there is not a single word in the lower court's decision indicating it gave weight to any state policies in making its determination to reject the most analogous state statute of limitations.

Moreover, as the four circuit court judges who dissented from the denial of rehearing en banc noted, "while the lower

court did describe the general federal policy behind §1983" it never explained "with any precision, why the six month period could not be squared with these policies." Knoll v. Springfield Township School District, supra, 699 F.2d. at 147. "Much of the reasoning" the lower court employed in rejecting the six month period, "could equally be applied to strike down any limitations period for any such period arguably circumscribes the broad sweep of Section 1983." Ibid.

Lest there be any doubt that those principles ennunciated by this Court in Tomanio are still good law, this Court's most recent statute of limitations case reiterates them, albeit in a different context. See Del Costello v. International Brotherhood of Teamsters, and United Steelworkers of America, AFL-CIO-CLC v. Flowers, 51 U.S.L.W. 4693 (June 8, 1983) (hereafter "Del Costello"). This consolidated case involved

disputes between an employee and his union (as well as his employer); no federal statute of limitations was expressly applicable. In determining what limitations period to apply, the Court expressly recognized that generally courts are to apply "the most closely analogous statute of limitations under state law." Del Costello, supra, 51 U.S.L.W. at 4695. It was only because in these cases the Court found "no close analogy in state law," id. at 4697, that it determined to apply a federal statute of limitations. The federal statute which the Court applied, established a six month limitations period; in one of the cases it was applied in preference to a three year state statute of limitations. Id. at 4698.

This Court has thus, only days ago, expressly recognized that application of a "short" statute of limitations is not

necessarily "bad". The Third Circuit's holding to the contrary should be reviewed and then reversed.

II.

The Deep Division Among The Lower Courts In This Area Which Resulted In The Unsanctioned Holding Below Should Be Resolved By This Court

The Court below, in refusing to apply the most clearly analagous six month statute of limitations in a federal civil rights action ignored conflicting decisions in two other circuits.

In Burns v. Sullivan, 619 F.2d. 99, 106-107 (1st Cir.), cert. denied, 449 U.S. 893 (1980), the First Circuit held that a six month limitation is reasonable in §1983 cases. The Court expressly rejected the theory that such a statute of limitations was too short emphasizing the "important policy reasons" which supported the use of a short

limitations period in state court. The First Circuit has consistently followed Burns. See e.g., Holden v. Massachusetts Commission Against Discrimination, 671 F.2d. 30 (1st Cir.), cert. denied, 103 S.Ct. 97 (1982) and most recently in Gashgai v. Leibowitz, 703 F.2d. 10, 12 (1st Cir. 1983).

The Eighth Circuit in Warren v. Norman Realty Company, 513 F.2d. 730, 733-35 (8th Cir. 1975), cert. denied, 423 U.S. 855 and Green v. Ten Eyck, 572 F.2d. 1233 (8th Cir. 1978) applied a 180 day state statute of limitations to actions brought under §1982. But see Chambers v. Omaha Public School District, 536 F.2d. 222 (8th Cir. 1976).[2/]

[2/] In fact, Chambers is the only case other than the one at hand in which a Court of Appeals has refused to employ a short state statute of limitations in an employment dispute involving a public employee. However, Chambers is distinguishable from the case at hand in several respects. First, the court there paid no attention to the fact that Chambers was a public employee and so there was no acknowledgement of particular significant state interest in this area. See infra, §III. Perhaps even more significantly, the Chambers court based its holding, at least in part, on the (continued)

Aside from the conflict that the holding below presents with the First and Eighth Circuit decisions, its reasoning conflicts with the reasoning of most of those courts of appeals who have refused to apply short state statutes of limitations in employment disputes. See McNutt v. Duke Precision Dental and Orthodontic Laboratories, Inc., 698 F.2d. 676 (4th Cir. 1983); Zuniga v. AMFAC Foods, Inc., 580 F.2d. 380 (10th Cir. 1978); Mason v. Owens - Illinois, Inc., 517 F.2d. 520 (6th Cir. 1975); Waters v. Wisconsin Steelworkers of International Harvester Co., 427 F.2d. 476 (7th Cir.), cert. denied, 400 U.S. 911 (1970). Each of these cases, like the decision below, rejected a short state statute of limitations. However, unlike the court

---

fact that application of a short statute of limitations in that case would have barred the plaintiff's First Amendment claim. 536 F.2d. at 227. Here, of course, there is no contention that any First Amendment claim is barred by the statute of limitations.

below, the other courts rejected a short state statute of limitations not because it was "too short," but because it was not "the most clearly analagous" available state statute of limitations.[3/]

Indeed, even those cases upon which the court below relied, Childers v. Independent School District, 676 F.2d. 1338, 1343 (10th Cir. 1982) quoting Shouse v. Pierce County, 559 F.2d. 1142, 1146 (9th Cir. 1977), involve a court's rejection of a state limitations period for administrative, rather than judicial actions. Because of this, they are easily distinguishable from the case at hand where the federal court was asked to accept a limitations period which was clearly applicable to judicial proceedings.

3/ Frequently, this was because the state statute of limitations was upon initiation of state administrative proceedings and so was, for this reason, held inapplicable "to a judicial action." See e.g., McNutt v. Duke Precision Dental and Orthodontic Laboratories, Inc., supra, 698 F.2d. at 678.

While not relied upon by the Court below, there is language in one recent decision which does support its holding. See Garmon v. Foust, 668 F.2d. 400, 406 (8th Cir.), cert. denied, 102 S.Ct. 2283 (1982) ("we . . . reject the tort analogy because it unduly cramps the significance of Section 1983 as a broad statutory remedy.") Of course Garmon v. Foust, supra, a civil rights action against police officers, did not involve the established public policy in favor of resolving employment disputes of public employees expeditiously as the case at hand does. Moreover, in that case, since the police officers did not raise it, the Court specifically reserved the question of whether a state statute which required any person claiming damages against a municipality to commence the action within six months should be applied. Id. 668 F.2d. at 405 n. 9. Compare Swyka v. Johnson, supra, 669 F.2d. 675.

The other cases which generally support the lower court's holding come from the Tenth Circuit, which has indicated, in dicta, that if a substantial question exists as to which state statute applies, it will apply the "more generous" limitation period as a matter of policy. See e.g. Shah v. Halliburton, 627 F.2d. 1055, 1059 (10th Cir. 1980). However, the Tenth Circuit has recently disavowed that position. Garcia v. University of Kansas, 707 F.2d. 849 (10th Cir. 1983).

In summary, the Circuits are clearly divided in this area; some applying short statutes of limitations in federal civil rights actions, some expressly refusing to do so, most at least attempting to apply the most nearly analogous limitations period, but a few, the court below among them, refusing even to do this. Certiorari should be granted so that this important public policy question, which effects so many states can be definitively resolved.

III.

If The Lower Court Decision Is Allowed To Stand, It Will Undermine The Legitimate And Long-Recognized State Policy Of Prompt Assertion and Prompt Resolution Of Employee Disputes

Although the Pennsylvania statute of limitations rejected by the lower court is less than a decade old, it reflects a policy grounded in nearly a century of common law. The policy that the employment disputes of public employees be promptly asserted and promptly resolved is also one that has been endorsed by this Court and is mirrored in numerous federal statutes.

It is noteworthy that this rule was first ennunciated in cases involving mandamus -- the closest state analogue to an action under 42 U.S.C. §1983.[4/] Mandamus, like

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[4/] The Writ of Mandamus, like §1983, has as its purpose to remedy the abuse of governmental power, particularly illegal and unconstitutional action. In Maryland, at least since the middle of the 19th century, mandamus has served as a remedy for a public officer to challenge his ouster and (continued)

§1983, carries with it no specific statute of limitations. The timing of actions is governed by the equitable doctrine of laches. United States ex rel. Arant v. Lane, 249 U.S. 367, 372 (1919). Although the question of laches has traditionally been a heavily factual inquiry, when a public employee brings a mandamus actions against his employer, the issue has strong public policy overtones. For example, in Williams v. Livingston Parish School Board, 191 So. 143 (La.App. 1939), one state court said:

> "Sound public policy requires that an employee of a public body who claims to have been illegally discharged should press his claim for reinstatement with diligency and without unnecessary delay. The rule that laches on the part of such employee will bar his claim for reinstatement is not based on any law of prescription or limitation of public policy. The processes of government must go on and employees

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regain his position. It is an action at law which like, 42 U.S.C. §1983, offers a damage remedy, Maryland Rule BE44, ancillary injunctive relief, Maryland Rule BF, and the right to a jury trial. Md. Code, Courts and Judicial Proceedings Article, §3-8A-02.

> who are officials must be paid out of public revenue for carrying on the functions of government." Id. at 144.

See Annot.: Acquiescence or Delay as Affecting Rights of Public Employee Illegally Discharged, Suspended or Transferred, 145 ALR 767 (1943), which collects more than 100 cases on the subject -- some going as far back as 1879 and some involving the application of delays of only four months.

More than 60 years ago, this Court recognized the wisdom of this policy:

> "When a public official is unlawfully removed from office, whether from disregard of the law by his superior or from mistake as to the facts of his case, obvious considerations of public policy make it of first importance that he should promptly take the action requisite to effectively assert his rights, to the end that if his contention be justified the Government service may be disturbed as little as possible and that two salaries shall not be paid for a single service."

United States ex rel. Arant v. Lane, 249 U.S. 367, 372 (1919). Similarly, in Nicholas v. United States, 257 U.S. 71, 75 (1921), this Court said:

> "[A] person illegally dismissed from office is not thereby exonerated from obligation to take steps for his own protection and may not for an unreasonable length of time acquiesce in the order of removal, which it was within the power of the Secretary to make, and then recover for the salary attached to the position. In cases of unreasonable delay he may be held to have abandoned title to the office and any right to recover its emoluments."

See also Norris v. United States, 257 U.S. 77 (1921) (Relief denied to a federal employee who waited 11 months before bringing an action against his employer.)[5/]

In most jurisdictions, the mandamus remedy for public employee disputes has been supplanted by specific statutory grievance procedures that ordinarily apply to all types of complaints involving the terms and conditions of employment, including discharge

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[5/] The rule of these old cases is reflected in more recent precedent. See e.g. Zuckert v. Peterson, 321 F.2d. 748 (D.C. 1963), cert. denied, 375 U.S. 971 (1964); Jones v. Summerfield, 265 F.2d. 124 (D.C. 1959), cert. denied, 361 U.S. 841 (1959). The Maryland rule was articulated in 1950. See Duffey v. Rickard, 194 Md. 228, 71 A.2d. 41 (1950) (Finding laches in a 5 month delay).

and failure to promote. For example, Maryland law sets up a schedule under which a classified employee has 165 days to challenge a termination or other type of grievance action. See Md. Code, Article 64A, §33 and §54; Md. Rules of Procedure B4.[6/] And the very same policy of expeditious assertion and resolution of public employee cases is found in a host of other Maryland statutes governing specific classes of employees. See supra at 3.

The states are not alone in recognizing the wisdom of such a policy. Employment discrimination complaints under Title VII of the Federal Civil Rights Act, 42 U.S.C. §2000e, et seq, must be filed within 180

[6/] In Grattan v. Brunett, No. 82-1924, U.S. (4th Cir. Argued March 10, 1983), the State of Maryland is contending, inter alia, that either these statutes or the common law rule of Duffey v. Rickard, 194 Md. 228, 71 A.2d. 41 (1950), should supply the limitations period in §1983 public employee limitation cases.

days. Similarly, unfair labor practice complaints under the National Labor Relations Act must be filed within 6 months. 29 U.S.C. §160(b). See Del Costello v. Teamsters, 51 L.W. 4393 (June 8, 1983). And Congress has adopted an elaborate system to resolve federal employment disputes "at the earliest practicable date." See 5 U.S.C. §7503(b)(4) and §7513(b)(4); Bush v. Lucas, 51 U.S.L.W. 4752 (June 13, 1983).

In short, there exists both in the common law and state and federal statutes a pervasive and long-recognized policy of requiring a prompt start and a swift end to public employee disputes and litigation to the end that the provisions of vital government services not be disrupted for prolonged periods by employer-employee acrimony.

In light of this history, it is surprising that the lower court refused to

conclude that Congress would permit private employment discrimination disputes and public employee cases to be treated differently under the 1871 Civil Rights Act. Certainly, this view is not shared in other federal circuits. See e.g. McNutt v. Duke Precision Dental & Orthodontics Laboratories, Inc., 698 F.2d. 676 (4th Cir. 1983), where the Court of Appeals for the Fourth Circuit said that as a policy matter a shorter period of limitations for controversion over discharge, demotions, and failure to promote or transfer may have virtue "particularly when the plaintiff is a public employee." Id. at 678.

Moreover, this Court has recognized the special relationship existing between a public employer and its employees, see e.g. National League of Cities v. Usery, 426 U.S. 833 (1978), and has not hesitated to treat government employees differently from private employees for purposes of the assertion of

discrimination complaints, see Brown v. General Services Administration, 425 U.S. 820 (1976), and constitutional claims, see Bush v. Lucas, 51 U.S.L.W. 4752 (June 13, 1983).

To assert, as has the Court of Appeals for the Third Circuit, that Congress could not have intended discrimination claims against a private employee under 42 U.S.C. §1981 to be treated differently than those lodged against a public employee under 42 U.S.C. §1983 is to ignore the very real difference in those federal statutes. In §1983, Congress has elected to afford plaintiffs a "unique" remedy for the abuse of state power, Mitchum v. Foster, 407 U.S. 225, 239 (1972). However it is also a remedy crafted with a careful eye toward a state's Eleventh Amendment immunity, see Quern v. Jordan, 435 U.S. 904 (1978) and the assertion of official immunity, see Harlow v. Fitzgerald, _____ U.S. _____, 102 S.Ct. 2727

(1982), to name just a few considerations not present in a private employment discrimination case under 42 U.S.C. §1981.

In summary, through the common law and statutes, special considerations have been given to the prompt assertion and resolution of public employee disputes -- considerations the Third Circuit was not free to ignore in fashioning its unsupported view of the wisdom of Pennsylvania's six month statute of limitations.

CONCLUSION

For all of these reasons, Maryland asserts that this case presents issues of great importance to the states. We urge that review be granted and that this Court examine and revise the decision of the Court of Appeals for the Third Circuit.

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82-1889

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No.

In the Supreme Court of the United States

October Term, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a Political Subdivision of the Commonwealth of Pennsylvania; ROMAN, LOUIS A., Superintendent, Springfield Township School District; LAWN, JOHN J., HANSHAW, MARIE M., COMMINS, JAMES A., GORDEN, SARA LEE, HOCK, JR., WILLIAM C., HOGUE, JR., E. BURKE, KALISH, SALLY, LIEBERMAN, MAX L. and TORBIN, HARPUR M., Individually and as Members of the Board of School Directors, Springfield Township School District,

Petitioners

vs.

KNOLL, MADELIN H.,

Respondent

On Petition for a Writ of Certiorari to The United States Court of Appeals for the Third Circuit.

AMICI CURIAE BRIEF IN SUPPORT OF THE GRANT OF A WRIT OF CERTIORARI ON BEHALF OF PENNSYLVANIA, OHIO, RHODE ISLAND, NEW HAMPSHIRE, NORTH CAROLINA, HAWAII, WISCONSIN, KANSAS, LOUISIANA, NEBRASKA, INDIANA, ILLINOIS, MISSOURI AND WEST VIRGINIA

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INTEREST OF THE AMICI CURIAE

This case presents the question whether a federal court properly may reject application of a state statute of limitations, which it is required to borrow for purposes of a civil rights action, because the court determines that the limitations period is too short. The decision of the court of appeals in this case, refusing to apply Pennsylvania's six-month statute of limitations to an employment discrimination claim brought pursuant to 42 U.S.C. §1983, will have a broad impact on the states joining in this brief.

The states, their officers and employes are, perhaps, the most frequent defendants in federal civil rights actions. Although the civil rights statutes represent a strong federal policy to encourage vindication of civil rights, Congress likewise has expressed the firm view that certain interstices in the civil rights scheme, including the prescription of limitations periods, are to be filled by application of state law. See 42 U.S.C. §1988. The *amici* have a substantial interest in the vindication of their responsibility and power to choose generally applicable limitations for actions.

The Third Circuit's decision here, if permitted to stand, will have a considerable effect on *amici*. In addition to the Pennsylvania statute at issue here, there are statutes of limitations from at least 32 States[1] which are

[1] *See* ARIZ. REV. STAT. ANN. §41.1481 (six-month limitation; employment discrimination); COLO. REV. STAT. §24-34504 (90-day limitation; housing discrimination); CONN. GEN. STAT. §46a-82 (six-month limitation; employment discrimination); DEL. CODE ANN. tit. 6 §4605 (six-month limitation; housing discrimination); FLA. STAT. ANN. §23.167 (six-month limitation; em-

less than one year and which could be applied to civil rights actions. With respect to each of these statutes, the State has made a carefully considered policy choice in

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ployment discrimination); GA. CODE ANN. §89-1714 (six-month limitation; employment discrimination); HAWAII REV. STAT. §378-4 (90-day limitation; discrimination action); ILL. REV. STAT. ch. 68 §7-102 and 103 (180-day limitation; civil rights violation); IND. CODE ANN. §34-4-16.5-7 (180-day limitation; political subdivision claim); IOWA CODE ANN. §601 A. 15(12) (180-day limitation; employment discrimination); KAN. STAT. ANN. §44-1004 and 1005 (six-month limitation; employment discrimination); KY. REV. STAT. §344.200 (six-month limitation; employment discrimination); ME. REV. STAT. ANN. tit. 5 §4611 (six-month limitation; employment discrimination); MASS. GEN. LAWS ANN. ch. 151B §5 (six-month limitation; employment discrimination); MICH. STAT. ANN. §3.548 (601) II(b) (90-day limitation; employment discrimination); MINN. STAT. ANN. §363.06 (six-month limitation; employment discrimination); MO. ANN. STAT. §213.120 (180-day limitation, housing discrimination); MONT. CODE ANN. §49-2-501 (six-month limitation; employment discrimination); NEB. REV. STAT. §20-119 (six-month limitation; housing discrimination); NEV. REV. STAT. §613.430 (six-month limitation; employment discrimination); N.H. REV. STAT. ANN. §354-A:09 (90-day limitation; discrimination action); N.J. REV. STAT. §10:5-18 (six-month limitation; discrimination); N.M. STAT. ANN. §28-1-10 (90-day limitation; discrimination action); OHIO REV. CODE ANN. §4112.05 (six-month limitation; discrimination action); OKA. STAT. ANN. tit. 25 §1501 (six-month limitation; discrimination action); R.I. GEN. LAWS §28-6-10 (four-month limitation; employment discrimination); S.D. CODIFIED LAWS §20-13-31 (180-day limitation; discrimination action); TENN. CODE ANN. 4-21-117 (180-day limitation; discrimination action); UTAH CODE ANN. 34-35-7(15) (30-day limitation; discrimination action); VA. CODE §36-94 (180-day limitation; housing discrimination); W. VA. CODE §5-11-10 (90-day limitation; discrimination action); WYO. STAT. §27-9-106 (90-day limitation; employment discrimination).

balancing the interests of potential plaintiffs and defendants. The Third Circuit's decision here undermines the States' ability to exercise the discretion afforded them by Congress to make these policy choices. For that reason, *amici* have a substantial interest in the resolution of this case.

REASONS FOR GRANTING THE WRIT

1. The Decision Below Conflicts With the Decision of Other Courts of Appeals as to the Suitability of Applying to Federal Civil Rights Actions Six-Month Statutes of Limitations

Section 1988 of Title 42 provides, in pertinent part, that federal courts adjudicating civil rights claims shall refer to state law "when federal law provides no rule of decision." *Board of Regents of the University of the State of New York v. Tomanio*, 446 U.S. 478, 484 (1980) (hereinafter *"Tomanio"*). Because the civil rights statutes have no statutes of limitations, state law supplies the rule of decision. Under Section 1988, state law may be disregarded only if it is "inconsistent with the Constitution and laws of the United States", or if it is "inconsistent with the federal policy underlying the cause of action under consideration." *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 465 (1975).

Pennsylvania law prescribes a six-month statute of limitations for actions brought against state and local government officials.[2] 42 Pa. Cons. Stat. §5522(b). In reliance upon what it perceived to be the "remedial spirit"

[2] 42 Pa. Cons. Stat. §5522(b) provides as follows:

Commencement of Action Required.—The following actions and proceedings must be commenced within six months:

(1) An action against an officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this sub-chapter.

of the civil rights statutes, the Third Circuit concluded here that six months simply is too short a time period in which to expect the average plaintiff to realize the import of the action taken against him and to file a lawsuit. In reaching its decision, the Third Circuit ignored decisions of the First and Eighth Circuits upholding application of six-month limitations periods to civil rights claims.

In *Burns v. Sullivan*, 619 F.2d 99 (1st Cir. 1980), the court of appeals applied Massachusetts' six-month limitation to a civil rights race discrimination claim. The First Circuit found the six-month period to be reasonable. "Although it may take more than six months to properly prepare a civil rights case, a complaint meeting the requirement of Fed. R. Civ. P. 8(a) can surely be filed in that time. And amendments to the complaint and supplemental pleadings may be sought after suit is brought. Fed. R. Civ. P. 15." *Id.*, at 106. The court also emphasized the "important policy reasons" which support using the limitations applicable to similar actions in state court; a longer limitations period for federal actions would encourage initial resort to federal court thereby further involving the federal courts in local matters. *Ibid.* The First Circuit consistently has followed *Burns*. *See. e.g. Hussey v. Sullivan*, 651 F.2d 74 (1st Cir. 1981); *Holden v. Massachusetts Commission Against Discrimination*, 671 F.2d 30 (1st Cir.), *cert. denied*, 103 S.Ct. 97 (1982); *Carter v. Supermarkets General Corp.*, 684 F.2d 187 (1st Cir. 1982); *Dewey v. University of New Hampshire*, 694 F.2d 1 (1st Cir. 1982).

Similarly, the Eighth Circuit in *Warren v. Norman Realty Co.*, 513 F.2d 730, *cert. denied*, 423 U.S. 855 (1975) and *Green v. Ten Eyck*, 572 F.2d 1233 (1978), applied to federal civil rights claims challenging local

housing practices 180-day limitations imposed by Nebraska's and Missouri's fair housing laws.[3]

The Third Circuit here chose not to acknowledge the decisions cited above or to canvass the important state policies reflected in Pennsylvania's statute of limitations. Instead, the court substituted its own judgment for that of the state legislature as to what limitations period is fair and reasonable. Because this decision conflicts with decisions of the First and Eighth Circuits, certiorari should be granted to review the judgment below.

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2. This Case Involves an Important Question of Federal Law Regarding Application of State Statutes of Limitations to Federal Civil Rights Actions and Conflicts With the Decisions of This Court

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As Judge Adams observed in his dissent from the denial of rehearing: "There is no indication that the opinion in the present case follows Tomanio's direction to give weight to the significant policies underlying the state statute of limitations" (Pet. App. 34a; 699 F.2d, at 147). The Third Circuit's failure properly to apply the *Tomanio* test justifies this Court's review.

The teaching of *Tomanio* is that, in civil rights actions, "state statute[s] of limitations . . . are more than a technical obstacle to be circumvented if possible. In most cases, they are binding rules of law." 446 U.S. at 484.

[3] Although no other courts of appeals have addressed this question, as we noted earlier (see *note* 1, *supra*), at least 33 States have statutes of limitations of less than one year which, arguably, could be applied to a civil rights action.

Only if the policies underlying the state limitations period are inconsistent with the federal policies reflected in the civil rights statute may the state statute be ignored. 446 U.S. at 487. In this case the Third Circuit erred in failing even to consider the policies on which the state statute is based.

Statutes of limitations are inherently arbitrary in that they involve "a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting prosecution of stale ones." *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 463-464 (1975). *See also Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945). The borrowing provisions of 42 U.S.C. §1988 reflect a congressional judgment to "rely on the State's wisdom in setting a limit" on the time for bringing an analogous action. 421 U.S., at 464. Generally, a state statute of limitations which does not discriminate against federal rights and which gives the party a reasonable time to sue must be applied. *Campbell v. Haverhill*, 155 U.S. 610, 615-616 (1895).

Pennsylvania's six-month limitation period for claims against public officials fosters important state policies beyond those reflected in limitations statutes generally. State and local governments are more likely to experience frequent changes in personnel than are other entities. The almost constant flux in which government finds itself exacerbates the problems of assembling evidence to defend claims. Even a short passage of time often will result in the departure from government of persons with knowledge of the circumstances surrounding the claim. Frequently, upon leaving government, former officials are less than

cooperative in assisting the defense. Moreover, the large volume of business and transactions handled by the government often creates serious problems in keeping track of and assembling documents necessary to defend in litigation. These considerations provide additional justification in the context of this case for respecting the state's choice.[4]

As petitioners have noted (Pet. 14-15), the policies which support shorter limitations periods for actions against public officials are particularly compelling when the claim involves discrimination in public employment. Every time a government agency fires, fails to promote or refuses to hire a person, someone else fills the position. The passage of time makes it increasingly difficult for the agency to reverse its course if a court decides that the agency violated the civil rights statutes by virtue of its personnel decision. In fact, Congress itself explicitly recognized this problem and prescribed a 180-day limitations period for employment discrimination actions. See 42 U.S.C. §2000e-5 (e).[5]

When balanced against the federal policies which underlie the civil rights statutes, it is clear that the state policies in no way conflict with the federal aims. The

[4] In light of the strong policies which support the state's choice of a six-month limitation, it is particularly ironic that the court of appeals held that a six-year limitation period applies to civil rights actions (Pet. App. 15a; 699 F.2d at 145). That holding clearly flies in the face of the presumption, created by Section 1988, that the states may be relied upon to make these policy choices.

[5] The Third Circuit has not limited its holding to employment discrimination actions or any other categories of cases. *See Swyka v. Johnson*, 699 F.2d 675 (1983), *petition for cert. filed*, No. 82-1928 (May 19, 1983).

"principal policies embodied in §1983 [are] deterrence and compensation." *Tomanio*, 446 U.S., at 488. It is difficult to see how these policies are significantly affected by Pennsylvania's statute. Claims can be readily enforced, compensation may be received, and deterrence fostered if an action is filed within six months.

The court of appeals' conclusion (Pet. App. 10a; 669 F.2d at 142) that six months simply is too short a time in which to file a claim is unsupported by any evidence in the case at hand or empirical data derived from other cases. Certainly Congress did not believe that 180 days inherently is too short a time in which to require that action be taken to commence civil rights proceedings. *See* 42 U.S.C. §2000e-5 (e) (employment discrimination); 42 U.S.C. §3610 (b) (housing discrimination). In light of the general proliferation of civil rights actions and the substantial litigation in the employment area in particular it can hardly be argued persuasively that the average person needs more than six months to file an action.

The court of appeals also relied upon what it found as a federal policy, implicit in §1983, to favor vindication of individual rights (Pet. App. 11a; 699 F.2d, at 143). Once again, the statute at issue here has no direct impact on that policy. If the Third Circuit is concerned that some rights will not be vindicated because the statute will bar the claim, it is sufficient to note that "a state statute cannot be considered 'inconsistent' with federal law merely because the statute causes the plaintiff to lose the litigation." *Robertson v. Wegmann*, 436 U.S. 584, 593 (1978).

The court of appeals also relied upon what it considered to be a congressional policy of uniformity (Pet. App. 10a-11a; 699 F.2d, at 143-144). The court found

this policy to be undermined by the possibility that one limitations period would apply to public officials under 42 U.S.C. §§1983 and 1985, while a different limitations period applied to private defendants sued under 42 U.S.C. §§1981, 1982 and 1985. Once again, the court ignored this Court's teachings.

As the Court observed in *Tomanio*, the claim that federal policy requires uniformity in application of limitations statutes to civil rights claims consistently has been rejected. "The need for uniformity, while paramount under some federal statutory schemes, has not been held to warrant the displacement of state statutes of limitations for civil rights actions." 446 U.S., at 489. Congressional reliance on state law obviously presupposes the lack of nationwide uniformity. *Robertson v. Wegmann, supra,* 436 U.S., at 594, n.11. The same rationale applies here. If Congress had no difficuty with the application of varying limitations for the very same cause of action brought in different states, it is unreasonable to suggest that federal policy is substantially affected by the application of different limitations to different causes of action brought in the same forum.

In the final analysis, there is no substantial basis in this case to reject out of hand the state's considered judgment that claims against public officials must be commenced promptly. The federal policies of compensation for civil rights violations and deterrence of future misconduct are not affected in the sightest by application of Pennsylvania's six-month statute of limitations.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decision of the Third Circuit.

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Supreme Court of the United States

OCTOBER TERM, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF PENNSYLVANIA, *et al.*,
Petitioners,

v.

MADELIN H. KNOLL,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF OF RESPONDENT IN OPPOSITION

11pp

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COUNTER-STATEMENT OF QUESTION PRESENTED

Did the court of appeals err in holding that Pennsylvania's six-month statute of limitations for actions against public officials should not be applied in an employment discrimination action against a school district under 42 U.S.C. § 1983, where such an action against a private employer would be governed by the state's six-year statute of limitations?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-1889

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF PENNSYLVANIA, *et al.*, *Petitioners*,

v.

MADELIN H. KNOLL, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF RESPONDENT IN OPPOSITION

SUMMARY OF ARGUMENT

1. Contrary to petitioners' contention, there is no irreconcilable conflict between the decision in this case and decisions of the First and Eighth Circuits. The Eighth Circuit has not addressed the question whether the application of a six-month statute of limitations to a civil rights claim is inconsistent with federal policy. To the extent that the First Circuit has addressed the question, its decisions have turned on the peculiarities of the particular state statutes involved, and present no true conflict with the decision below.

2. The question on which review is sought has rarely arisen, and this case does not present any of the questions pertaining to statutes of limitations for federal civil rights claims that have recurred with frequency in the federal courts. The question presented here would, at

best, warrant review only in a case presenting those other issues of more general importance.

3. The decision of the court of appeals is interlocutory, and the question presented may have no impact on the outcome of this litigation. That question only involves respondent's claims under § 1983, and does not affect her claims under Title VII. Respondent may ultimately obtain under Title VII all the relief to which she would be entitled under § 1983. The case will in any event be the subject of further proceedings in the district court, and were plaintiff eventually to obtain independent relief under § 1983, any issue warranting review could be presented to this Court at that time.

For these reasons, the petition for certiorari should be denied.

ARGUMENT

The question petitioners ask this Court to review involves no square conflict among the circuits, presents no issue of general importance, and quite possibly will have no impact on the ultimate outcome of this litigation. The petition for certiorari should therefore be denied.

1. Petitioners assert that the decision in this case conflicts with decisions of the First and Eighth Circuits "as to whether six-month statutes of limitations may, consistent with federal policy, be applied to federal civil rights actions" (Pet. at 8-11). But in fact, the cases present no irreconcilable conflict.

a) In the Eighth Circuit cases cited by petitioners, the only issue addressed by the court was the question of which state cause of action was "most closely analogous" to the plaintiff's federal claim. *Warren* v. *Norman Realty Co.*, 513 F.2d 730, 733-734 (1974), *cert. denied*, 423 U.S. 855 (1975); *Green* v. *Ten Eyck*, 572 F.2d 1233, 1237-1238 (1978). In both cases the state cause of action found to be "most analogous" was governed by a six-month statute of limitations, and the court applied that

limitations period. But there is no indication in either case that the six-month limitations period was challenged as inconsistent with federal policy, and in neither case did the court address that issue.

b) In certain of the First Circuit cases cited by petitioners—unlike the Eighth Circuit cases—federal policy was one of the factors considered by the court in determining which statute of limitations to apply. But the First Circuit's decision to apply a six-month limitations period in those cases, and the Third Circuit's decision to reject such a limitations period in this case, ultimately turn on differences in the particular state statutes involved, rather than on any irreconcilable conflict as to the applicable principles of federal law.

(1) The First Circuit decision upon which petitioners principally rely is *Burns* v. *Sullivan*, 619 F.2d 99, *cert. denied*, 449 U.S. 893 (1980). The plaintiff in *Burns* claimed racial discrimination in employment, and Massachusetts provided an administrative remedy for that precise type of claim, with a six-month limitations period. In holding that the six-month limitations period applicable to the state administrative procedure was not too short to be applied to the identical claim asserted in fedcourt, the First Circuit relied in two critical respects on teh fact that the limitations period was part of a state administrative remedy. First, the court suggested (without deciding) that the plaintiff might be required to exhaust that state remedy.[1] If so, the plaintiff's administrative claim would in any event have had to be filed within six months, and the court concluded that no added burden —and thus no interference with any federal policy— would result from applying the same limitations period to a subsequent court action. See 619 F.2d at 106-107. Second, the court reasoned that if exhaustion were *not* legally required, federal policy would nonetheless favor application of the six-month limitations period, because a

[1] *Burns*, of course, preceded this Court's decision in *Patsy* v. *Board of Regents*, —— U.S. ——, 102 S. Ct. 2557 (1982).

longer period would encourage plaintiffs to "bide their time and use the federal courts, bypassing the state administrative proceedings" (*id.* at 107)—a result which would weaken the "ability of the state to resolve its own personnel problems." *Ibid.*

In a subsequent case cited by petitioners, *Carter* v. *Supermarkets General Corp.*, 684 F.2d 187, 190 (1982), the First Circuit emphasized that its decision in *Burns* was based on a policy of "preventing employees from foregoing state administrative proceedings in favor of a later federal court action." And in *Holden* v. *Massachusetts Comm'n Against Discrimination*, 671 F.2d 30, 33 n.3 (1981), *cert. denied*, —— U.S. ——, 103 S.Ct. 97 (1982), the court reiterated: "Our concern in *Burns* was that if federal claims enjoyed longer limitations periods than state claims, plaintiffs would bypass state administrative remedies. . . ."[2]

Thus, the existence of a state administrative procedure containing a six-month statute of limitations was central to the First Circuit's conclusion that that limitations period could properly be applied to the federal claims presented in *Burns* and its progeny.[3] Inasmuch as the six-month Pennsylvania statute at issue in the instant case is not part of any administrative remedy, the considerations which so persuaded the First Circuit are absent here.

(2) By the same token, the Third Circuit relied in *this* case on a feature unique to the Pennsylvania statutes,

[2] In *Holden*, the court nevertheless applied a six-month limitations period in a case where an administrative remedy was not available; but the court did so in large part because of its reluctance, after *Burns*, "to give [the plaintiff] a longer limitations period than that available to other public employees in Massachusetts [asserting the same type of claim]." *Id.* at 33.

[3] The other First Circuit cases cited by petitioners contain no independent analysis of these issues. See *Hussey* v. *Sullivan*, 651 F.2d 74 (1981); *Dewey* v. *University of New Hampshire*, 694 F.2d 1 (1982).

which did not arise in *Burns*. The Third Circuit noted that if the claim in this case were asserted against a private employer, Pennsylvania's six-*year* statute of limitations would unquestionably apply; and the court relied heavily on that fact in declining to apply the six-*month* statute to this suit against a public employer. Pet. App. A-12 to A-14. In contrast, the Massachusetts statutes at issue in *Burns* "d[id] not . . . make a public-private distinction" (*Carter*, *supra*, 684 F.2d at 190), and the First Circuit cases applying a six-month statute have applied that statute to *all* employees, public and private. See *Carter*, *supra*; *Holden*, *supra*.[4] Thus, just as the First Circuit's decision in *Burns* turned on considerations not present in this case, the Third Circuit's decision here turned on considerations not present in *Burns*.

In sum, there is no irreconcilable conflict between the decision in this case and the decisions of the other circuits upon which petitioners rely. And even if a conflict could be discerned, it would remain the case that the decisions in question depend to such an extent on the peculiarities of the respective state statutes that no federal question of general importance is presented here.[5]

[4] Indeed, in *Holden* the First Circuit expresaly noted its reluctance to apply different limitations periods to plaintiffs asserting similar substantive claims. See note 2, *supra*. Thus, it is far from clear that the First Circuit, even in a case such as *Burns*, would sanction the application of a six-month limitations period to suits by public employees where, as here, a limitations period twelve times as long applies to suits by private employees.

[5] There is certainly no need for the Court to take this case in order to expound the basic principles that govern the application of state statutes of limitations to suits under § 1983. As petitioners acknowledge, those principles were fully articulated in *Board of Regents* v. *Tomanio*, 446 U.S. 478 (1980). For the reasons discussed in text, the question whether the court of appeals correctly applied the teaching of *Tomanio* to the particular state statutes at issue here does not warrant review.

2. Contrary to the suggestion in the Brief of the State of Maryland as Amicus Curiae in Support of the Petition for a Writ of Certiorari, at pp. 12-13, this case does *not* present any issue concerning the question of what state causes of action are "most clearly analogous," for limitations purposes, to federal civil rights claims. As the cases cited by Maryland indicate, the decisions of the lower courts are in disarray with respect to such questions as whether a civil rights claim should be analogized to a tort, or to some other cause of action,[6] and whether a limitations period applicable to a state *administrative* proceeding may appropriately be applied to a federal suit.[7]

The petition in this case does not present those recurring issues.[8] If the issue presented in this case were to arise in a case that presents those additional questions of more general importance, it might in that context warrant review. *This* case, presenting one narrow issue that has rarely arisen,[9] does not.

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[6] See, *e.g.*, *Garmon* v. *Foust*, 668 F.2d 400, 403-405 (8th Cir.), *cert. denied*, —— U.S. ——, 102 S. Ct. 2283 (1982); *Warren* v. *Norman Realty Co.*, *supra*, 513 F.2d at 733-734.

[7] See, *e.g.*, *McNutt* v. *Duke Precision Dental and Orthodontic Laboratories*, 698 F.2d 676, 678 (4th Cir. 1983) (noting conflict among the circuits on that issue).

[8] Maryland erroneously asserts that the Third Circuit's reasoning in this case conflicts with the reasoning of the aforementioned cases (Maryland Br. at 12-13). But as Maryland's own description of the cases indicates, those cases rejected a short limitations period on the ground that it was not the "most clearly analogous" state statute, and the courts therefore had no occasion to address—and did not address—the separate question whether such a limitations period would be too short as a matter of federal policy.

[9] Petitioners assert that at least 33 states have statutes of limitations of less than one year which "arguably" could be applied to civil rights actions. Petition, p. 11, n.13. However, with the sole exception of Indiana Code Ann. § 34-4-16.5-7, the statutes of each of those states are distinguishable from the Pennsylvania statute at issue here in that they are not limited to suits against the government. See p. 5 *supra*. And, petitioners make no showing that the question presented here (even if couched in the broad terms used by petitioners) has arisen with any frequency.

3. Finally, certiorari should be denied because the decision of the court of appeals is interlocutory. See, *e.g.*, *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327 (1967); R. Stern and E. Gressman, *Supreme Court Practice*, 300 (5th ed. 1978). It is far from clear that the Third Circuit's ruling with respect to the timeliness of respondent's claim under 42 U.S.C. § 1983 will have any ultimate impact on the outcome of this litigation. The court held that respondent's claim under Title VII may also be timely (Pet. App. A-15 - A-18), and petitioners do not seek review of that holding. It is therefore quite possible that plaintiff will receive under Title VII all the relief to which she would be entitled under § 1983. The case must in any event be the subject of further proceedings in the district court, and any question warranting review could be presented at the conclusion of those proceedings.

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

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No. 82-1889

THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a political subdivision of the Commonwealth of Pennsylvania; ROMAN, LOUIS A., Superintendent, Springfield Township School District; LAWN, JOHN J., HANSHAW, MARIE M., COMMINS, JAMES A., GOREN, SARA LEE, HOCH JR., WILLIAM C., HOGUE JR., E. BURKE, KALISH, SALLY, LIEBERMAN, MAX L. AND TOBIN, HARPUR M., Individually and as members of the Board of School Directors, Springfield Township School District,
Petitioners

v.

KNOLL, MADELIN H.,
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF PETITIONERS

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QUESTION PRESENTED FOR REVIEW

May a state six-month statute of limitations governing judicial actions against public officials which would otherwise be applicable and bar a Section 1983 claim of employment discrimination on the basis of sex, be disregarded on the ground that it is inconsistent with the federal policy underlying the cause of action under consideration?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit as well as its order denying rehearing and statement of Judge Adams sur denial of Petition for Rehearing are reported as *Knoll vs. Springfield Township School District*, 699 F.2d 137 (3d Cir. 1983); they are set forth in the Appendix to the Petition for Writ of Certiorari at A1 and A31, respectively. The opinion and order of the United States District Court for the Eastern District of Pennsylvania is not reported; it is set forth in the Appendix to the Petition at A19.

JURISDICTIONAL STATEMENT

(1) The judgment sought to be reviewed was filed on January 27, 1983.

(2) An order denying rehearing was entered on February 23, 1983.

(3) 28 U.S.C. Section 1254(a) confers jurisdiction on this Court to review the judgment in question by Writ of Certiorari filed within ninety (90) days after entry of the order denying rehearing. See 28 U.S.C. Section 2101(c); Supreme Court Rule 20.4.

(4) The Petition for Writ of Certiorari was filed on May 20, 1983.

STATUTORY PROVISIONS

This case involves the following statutory provisions:

(1) Section 1 of the Civil Rights Act of 1871, as amended, 42 U.S.C. Section 1983, which provides as follows:

CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, in equity, or other proper proceeding for redress.

(2) 42 U.S.C. Section 1988, which provides as follows:

PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution

and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(3) Section 5522 (b)(1) of the Pennsylvania Judicial Code, 42 Pa.Cons.Stat. Section 5522 (b)(1), which provides:

(b) Commencement of Action Required — the following actions and proceedings must be commenced within six months:

(1) An action against any officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this subchapter.

(4) Section 5527(6) of the Pennsylvania Judical Code, 42 Pa.Cons.Stat. Section 5527(6) which provides:

SIX YEAR LIMITATION

The following actions and proceedings must be commenced within six years:

. . . (6) Any civil action or proceeding which is neither subject to another limitation specified in this subchapter nor excluded from the application of a period of limitation by Section 5531 (relating to no limitation).

STATEMENT OF THE CASE

Respondent, Madelin Knoll, commenced this suit on April 21, 1981 to redress alleged discrimination on the basis of sex by her employer, the School District of Springfield Township (the "School District"). One of her claims sought relief under 42 U.S.C. Section 1983. In the alternative, Ms. Knoll sought relief under Section 703 of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-2 ("Title VII"). See Appendix to Petition for Writ of Certiorari, at A36.[1] Under Plaintiff's theory of the case, the last act of discrimination occurred in September 1980 when a man was appointed to the position of Assistant Superintendent — a position for which she had not applied.[2] The School District Defend-

1. References to the Appendix to the Petition for Writ of Certiorari are cited "A ____", and references to the Joint Appendix as "JA ____".

2. The facts underlying the Title VII and Section 1983 claims, as pleaded in Ms. Knoll's Complaint, are as follows: Ms. Knoll was awarded a doctorate degree in 1968 and was certified by the Pennsylvania Department of Education as qualified to serve in the following positions in the public schools: elementary teacher, reading specialist, supervisor of reading, elementary principal and district superintendent. (A39, at par. 16). In July 1979 she applied for a vacancy as Administrative Assistant to the Superintendent, a position for which she was qualified and certified. (*Id.*, at par. 17). On August 2, 1979 she was notified by the Superintendent that she had not been selected as Administrative Assistant but that a male applicant had been appointed. Ms. Knoll claims he had less qualifications and lacked the appropriate certification. (*Id.*, at par. 18). At that time, Ms. Knoll also claims the Superintendent promised her that he would create an administrative position for her during the 1979-1980 school year. This was not done. Instead, on about May 28, 1980, the Superintendent notified her, by letter, that no such position would be created for her either that year or during the school year 1980-1981. (A39-A40; at par. 19). In September 1980 the Administrative Assistant was appointed Assistant Superintendent. (A40, at par. 20). Ms. Knoll asserted that all of these events resulted from a continuing policy of discrimination against her on the basis of sex. (A40, at par. 21-22). The Complaint also included aver-

dants moved for summary judgment on the ground that the Section 1983 claim was barred by the Pennsylvania six-month statute of limitations governing certain actions against public officials.[3] The District Court agreed.[4]

ments that Ms. Knoll had filed a charge with the EEOC on December 12, 1980 and that the EEOC had issued her a right to sue letter on January 28, 1981. (A41, par. 27-28). A copy of the charge and the right to sue letter were attached as exhibits to the Complaint. (*Ibid*; A43-A45). The EEOC charge appended to the Complaint included the following characterizations of her claim:

> . . . Because I was denied the position of Administrative Assistant, coupled with Respondent's failure to create an administrative position for me, as promised, I was denied the opportunity to be considered for the position as the Assistant Superintendent in September.
>
> * * *
>
> It is my belief that had I been selected for the position of Administrative Assistant in July 1979, I would have been promoted to Assistant Superintendent in September 1980.

(A43-A44, JA3)

The charge was dismissed by the EEOC "because it was untimely filed." (A47; JA4).

3. 42 Pa.Cons.Stat. Section 5522(b)(1). The School District Defendants also moved for summary judgment with respect to Ms. Knoll's Title VII claim on the ground that it too was time barred by her failure to file timely charges with the EEOC.

4. The District Court also agreed with the School District and the EEOC that Ms. Knoll's Title VII claim had been untimely filed. The School District's defense was premised on the theory that the only acts of discrimination occurred, if at all, in July 1979 when a man was appointed to the position of Administrative Assistant or on May 28, 1980 when Ms. Knoll was given notification that she would not, either at that time or at any time during the 1980-1981 school year, be brought on a parity with or promoted above the position of Administrative Assistant. In substance, the School District urged, in accord with *Delaware State College vs. Ricks*, 449 U.S. 250 (1980) and *United Airlines, Inc. vs. Evans*, 431 U.S. 553 (1977) that the man's promotion in September 1980 was consistent with and was a mere eventual effect of those prior decisions. This was, in fact, the same view expressed by Ms. Knoll in her charge before the EEOC.

The Court of Appeals, in a panel decision, reversed the dismissal of the Section 1983 claim on the ground that the Pennsylvania six-month limitation period was so short as to be inherently inconsistent with the policies to be fostered by the Federal Civil Rights Acts. *Knoll vs. Springfield Township School District*,[5] supra, The School District Defendants applied for rehearing. The application was denied, with four judges voting to grant rehearing en banc. *Knoll*, supra, at 146. Judge Adams, writing on behalf of the dissent, noted that the panel's decision conflicted with the decisions of the First and Eighth Circuits and that the panel's opinion failed to follow this Court's "direction" that it was "to give weight to the significant policies underlying the state statute of limitations." *Knoll*, supra, at 146-147. The dissent further took issue with the panel's failure to explain "with any precision" why the limitations period could not be squared with the policies underlying the civil rights statutes, stating:

> The panel has made no attempt to demonstrate with specific reference to the facts of this case that six

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NOTE — (*Continued*)
(See n. 2, supra; JA3). As noted above, the District Court agreed with this view of the case and dismissed both the Title VII and Section 1983 claims.

5. The Third Circuit reversed as to both Ms. Knoll's Title VII and Section 1983 claims. In doing so, it held that her assertion in paragraph 22 of the Complaint that the decisions not to promote her were the result of a "continuing policy of discrimination" was sufficient to preserve the claims' viability and declined to pierce that assertion so as to prevent the mere continuity of her employment or the mere occurrence of the inevitable effect of a past act from prolonging the life of her cause of action. The School District argued before the Third Circuit below that such a ruling would be contrary to the holdings in *Delaware State College vs. Ricks*, supra and *United Airlines, Inc. vs. Evans*, supra. The correctness of the Circuit Court's ruling regarding the Title VII claim is not now before the Court. Cf. Supreme Court Rule 34.1(a).

> months was insufficient for the plaintiff to file a Complaint. Instead, without citing any evidence or empirical data, it speaks of this period as being too limited for the "average plaintiff." (Citation omitted). The panel does not even rely on the special nature of employment discrimination cases; it appears to indicate that six months is too short in *all* types of section 1983 actions. Thus, the panel seemingly would make it impossible to borrow a six-month statute even in section 1983 actions that easily could be commenced within six months.

(*Id.* at 147-148; emphasis in original; footnote omitted).

SUMMARY OF ARGUMENT

The statute at issue in this case — a six-month statute of limitations applicable to certain actions against public officials, including actions for discrimination in employment on the basis of sex — would have applied to the Complainant and would have barred her claim had she brought suit under state law, in state court. Therefore, this case does not present a question of whether the six-month statute of limitations is the "appropriate" one to be applied in the case. The only question is whether the six-month period provided by the statute is inconsistent with the federal Constitution and laws.

Based on the provisions of 42 U.S.C. Section 1988 and a long unbroken line of decisions of this Court, the inquiry regarding whether that statute is "inconsistent" with federal law should be narrow. It should be confined to a determination of whether the statute either discriminates against federal rights or provides so short a time that it would effectively preclude litigating a claim.

In this case, there is no question of discrimination, as the statute applies to both state and federal claims and was enacted with no discriminatory intent with respect to federal claims. Thus, the statute satisfies the first prong of the test. Similarly, the decisions of this Court and the several circuit courts below which have squarely answered the question, have, without hesitation, applied six-month limitation periods to claims as complex as the one at issue here.

In substance, therefore, there is no foundation from which to draw a conclusion that the Pennsylvania six-month statute of limitations either discriminates against federal claims or is so unreasonably short as to preclude access to the courts to an aggrieved party. If the court is to adhere to its prior reasoning and the intent of Congress set forth in 42 U.S.C. Section 1988, it must permit the application of Pennsylvania's six-month statute of limitations to civil rights claims.

ARGUMENT

WHERE A STATE LEGISLATURE HAS DETERMINED THAT CERTAIN JUDICIAL ACTIONS AGAINST PUBLIC OFFICIALS — SUCH AS SUITS BASED ON ALLEGED EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEX — SHOULD BE BARRED IF NOT COMMENCED WITHIN SIX MONTHS OF THEIR ACCRUAL, THE LEGISLATURE'S DETERMINATION THAT A SIX MONTH LIMITATION PERIOD WAS REASONABLE FOR THE COMMENCEMENT OF SUITS OF THAT SORT SHOULD NOT BE DISREGARDED.

This case squarely presents the Court with the question of whether a state statute of limitations applicable to the commencement of judicial proceedings should be disregarded in a 1983 suit solely on the ground that the limitation period — six months — is per se unreasonably short and, consequently, "inconsistent with the Constitution and laws of the United States."[6] 42 U.S.C. Section 1988.

There is no question in this case that the statute at issue was properly identified as the "most appropriate" state statute of limitations — "that [period of limitations] which the State would apply if the action had been brought in state court."[7] See *Knoll vs. Springfield Township School District*, supra; *Clyde vs. Thornburgh*, 533 F.Supp. 279 (E.D. Pa. 1982); *Eshmont vs. Commonwealth*, ____ Pa. Commonwealth Ct. ____ (No. 1390 C.D. 1981, filed November 24, 1981). The federal courts must therefore turn to this state statute of limitations in actions brought under Section 1983 and other civil

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6. *Johnson vs. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1975); *Burnett vs. Grattan*, ____ U.S. ____, ____ No. 83-264 (June 27, 1984), slip op. at 6.

7. *Johnson vs. Railway Express Agency, Inc.*, supra, at 469 (Marshall, J., concurring in part and dissenting in part); *Burnett vs. Grattan*, supra, slip op. at 7.

rights statutes unless it is inconsistent with the Constitution and laws of the United States.[8] In making that determination, the Court should limit its inquiry to whether the statute discriminates against federal causes of action or fails to give a party a reasonable time to sue.[9]

Although it has not been held squarely by the Court that discrimination against federal causes of action or the unreasonableness of the time to sue are the only grounds for disregarding a state statute of limitations for inconsistency with the federal constitution and laws, the reasoning of the Court in *Board of Regents vs. Tomanio*, 446 U.S. 478 (1980) ("*Tomanio*"), *Robertson vs. Wegmann*, 436 U.S. 584 (1978) ("*Robertson*"), and *Johnson vs. Railway Express Agency, Inc.*, 421 U.S. 454 (1975) ("*Johnson*") indicates that these are the proper boundaries for judicial review. See also, *Burnett vs. Grattan*, ____ U.S. ____, at ____, n. 15, No. 83-264 (June 27, 1984), slip op. at 11, n. 15 ("*Burnett*").

First, under *Tomanio*, "state statute(s) of limitations . . . are more than a mere technical obstacle to be circumvented if possible. In most cases, they are binding rules of law," *Tomanio*, supra, at 484. The underlying reason for this view was expressed as follow:

> This is obviously a judicial recognition of the fact that Congress, unless it has spoken to the contrary, did not intend by the mere creation of a "cause of action" or "claim for relief" that any plaintiff filing a complaint would automatically prevail if only the necessary elements of the federal substantive claim for relief could be established. *Id.*, at 488.

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8. *Burnett vs. Grattan*, supra, slip op. at 6; *Chardon vs. Soto*, 462 U.S. ____, No. 82-271 (June 20, 1983).

9. *Burnett vs. Grattan*, supra, slip op. at 11, n. 15; *Campbell vs. Haverhill*, 155 U.S. 610 (1895); *Johnson vs. Davis*, 582 F.2d 1316 (4th Cir. 1978).

Based on this reasoning, state policies of repose, in general, are not to be disfavored in federal law and the "borrowing" of state statutes of limitations in the context of Section 1983 suits should not be viewed as contravening the two principal policies embodied in the Civil Rights Act: "deterrence and compensation." *Ibid*. Rather, based on the Court's "prior opinions in this field" as well as considerations of federalism, the federal courts are to accord substantial weight to the significant policies underlying the state statute of limitations and should not consider such a statute " 'inconsistent' with federal law merely because the statute causes the plaintiff to lose the litigation." *Tomanio*, supra, at 489, 488 (citing *Robertson*, supra, at 593).

This reasoning, in turn, complements what was previously enunciated by the Court in *Johnson*, supra. That is, that state statutes of limitations represent the considered judgment of the state legislature "concerning the point at which the interests in favor of protecting valid claims are outweighed by the interest in prohibiting the prosecution of stale ones." *Id.*, at 463-464. See also *Chase Securities Corp. vs. Donaldson*, 325 U.S. 304, 313 (1945). The provisions of 42 U.S.C. Section 1988—that federal courts adjudicating civil rights claims are to refer to state law "when there is no specifically stated or otherwise relevant federal statute of limitations", *Johnson*, supra, at 462—reflects the intent of Congress that a federal court's reliance "on the state's wisdom in setting a limit", is proper. *Id.*, at 464.

Similarly, in *Robertson*, the Court rejected the approach that the broad relief sought to be afforded a Section 1983 plaintiff should permit him or her to prosecute an action in "disregard of the state law to which Section 1988 refers. . . ." *Robertson*, supra, at 593. Emphasizing this point, the Court reasoned:

> A state statute cannot be considered "inconsistent" with federal law merely because the statute causes the plaintiff to lose the litigation. If success of the

§1983 action were the only benchmark, there would be no reason at all to look to state law, for the appropriate rule would then always be the one favoring the plaintiff, and its source would be essentially irrelevant. But §1988 quite clearly instructs us to refer to state statutes; it does not say that state law is to be accepted or rejected based solely on which side is advantaged thereby. *Ibid.*

Historically, the Court has additionally rejected arguments that an actual consideration of federal policies by a state legislature was necessary for the application of a state limitation period to a federal claim, *McCluny vs. Silliman*, 3 Pet. 270, 277-278 (1830), or that a need for uniformity would "warrant displacement of state statutes of limitations for civil rights actions." *Tomanio*, supra, at 489. See also *Robertson*, supra, at 594, n. 11; *Johnson*, supra.[10]

10. Specifically, as noted by this Court in *Tomanio:*
Uniformity has also been cited as a federal policy which sometimes necessitates the displacement of an otherwise applicable state rule of law. (citation omitted). The need for uniformity, while paramount under some federal statutory schemes, has not been held to warrant displacement of state statutes of limitations for civil rights actions (citation omitted). *Tomanio*, supra, at 489.

For these reasons, considerations of "uniformity" should not control the decision in this case. Clearly, congressional reliance on state law, as provided by 42 U.S.C. Section 1988, presupposes lack of nationwide uniformity. *Robertson vs. Wegmann*, supra, at 594, n. 11. The same rationale should apply here. As Congress had no difficulty with the application of varying limitations for the very same cause of action brought in different states, it is not unreasonable to conclude that federal policy would be substantially undermined by the application of different limitation periods to different causes of action brought in the same forum. See, e.g., *Skehan vs. Board of Trustees*, 590 F.2d 470, 477 (3d Cir. 1978), cert. denied, 444 U.S. 832 (1979); *Davis vs. United States Steel Supply*, 581 F.2d 335, 337-341 (3d Cir. 1978); *Green vs. Ten Eyck*, 572 F.2d 1233 (8th Cir. 1978), where the courts analyzed various aspects of civil rights claims to determine the analogous state limitations periods and then applied different analogous periods to each separate claim.

Based on this reasoning, it would appear that only two standards for review of state limitation periods may logically be developed: (1) whether the state statute at issue discriminates against federal claimants as compared to those asserting analogous state law claims in state court or (2) whether the limitation period is so unreasonably short as to preclude effective access to the federal courts for the prosecution of civil rights claims. See *Campbell vs. Haverhill*, 155 U.S. 610, 615 (1895); *Burnett*, supra, slip op. at 11, n. 15; see also *Burnett*, supra, slip op. at 15 (Rehnquist, J., concurring).

For the reasons that follow, it is submitted that the Pennsylvania six-month statute of limitations applicable to certain actions against government officials—including claims of sex discrimination in employment—is neither discriminatory with respect to federal civil rights claims nor so short as to be inconsistent with the federal policies underlying the Civil Rights Act—compensation and deterrence. *Tomanio*, supra, at 488.

A. The Pennsylvania statute of limitations does not discriminate against federal civil rights actions.

The statute of limitations at issue in this case was enacted as part of a major, systematic revision and codification of Pennsylvania statutes relating to judicial actions and the judiciary, known as the Pennsylvania Judicial Code. See *Pennsylvania Bar Association Judicial Code Explanation*, 42 Pa.Cons.Stat., p. xi. The Code represented a "distillation of approximately 6,000 sections of Purdons' statutes enacted over a 277-year span." *Id.*, at xxxii. The General Assembly also determined to use the Code "as a vehicle to rationalize and simplify [the] statutes of limitations", (*Id.*, at xv) and, in doing so, generalized the six-month statute of limitations set forth in the Act of March 21, 1772 (1 Sm.L. 364), Section 7 (42 P.S. Section 1017, repealed) so that it became the residual statute of limitations for actions against public offi-

cers. 42 Pa.Cons.Stat. Section 5522, *Official Source Note*, at p. 24. See also *Pennsylvania Bar Association Judicial Code Explanation*, supra, at p. xv. As such, the statute of limitations at issue was clearly not enacted with any discriminatory intent or hostility towards federal civil rights actions.

The more cogent reason for finding that the Pennsylvania statute does not discriminate against federal claims is found in the holding of the Third Circuit below.[11] When the Third Circuit held it was the "analo-

11. The construction of the Pennsylvania limitation scheme as to which both the District Court and Circuit Court of Appeals were in agreement, is not now before the Court. However, that construction is significant. *Chardon vs. Soto*, 462 U.S. ____, No. 82-271 (June 20, 1983); *Propper vs. Clark*, 337 U.S. 472, 486-487 (1949). There, the Court described its hesitancy "to overrule decisions by Federal Courts skilled in the law of particular states unless their conclusions are shown to be unreasonable." *Id.* See also *Burnett* supra, slip op. at 14 (Powell, J., concurring); *Runyon vs. McCrary*, 427 U.S. 160, 181 (1976). Based on the authorities cited in the text, the judgment of the lower courts that the Pennsylvania six-month statute of limitations would govern this case had it been brought under state law in state court could not properly be characterized as "unreasonable". The conclusion of the lower courts with respect to this issue, therefore, should be accorded deference not only with respect to the applicability of the six-month period to this sort of case but also as to the equality of application of that statute to analogous state and federal claims alike. This conclusion is further buttressed by the nature and complexity of the Pennsylvania statutory limitation scheme. See generally, 42 Pa.Cons.Stat. Sections 5521, et seq. Specifically, the statutory scheme, conforming "to the modern principle that claims based on conduct, and hence heavily relying on unwritten evidence, should have relatively short statutes of limitations. . . ." (*Pennsylvania Bar Association Judicial Code Explanation*, supra, at p. xvi-xvii) consequently set the limitation period for libel, slander and invasion of privacy at one (1) year, 42 Pa.Cons.Stat. Section 5523; for assault, battery, false imprisonment, false arrest, malicious prosecution, malicious abuse of process, actions to recover damages for injury to the person or for wrongful death, or for the taking, detaining or injuring of personal property at two (2) years, 42 Pa.Cons.Stat. Section 5524; actions on certain contracts at four (4) years, 42 Pa.Cons.Stat. Section 5525,

gous" statute of limitations it concluded "that if (plaintiff) had brought her action in state court *under state law* it would have been subject to the six-month limitations period (citations omitted)." *Knoll*, supra, at 141 (emphasis added). Implicit in this finding was that state law and federal law claims were being treated equally. Where there is such equal treatment, there surely cannot be discrimination.[12]

For these reasons, the Pennsylvania six-month statute of limitations applicable to certain actions against public officials is unlike the Virginia one year statute of limitations expressly applicable to all Section 1983 actions which was rejected by the Court of Appeals for the Fourth Circuit in *Johnson vs. Davis*, 582 F.2d 1316 (4th Cir. 1978) (cited by this Court in *Burnett*, supra, slip op. at 11, n. 15) and there is no basis for the rejection of the Pennsylvania statute on the ground that it discriminates against federal civil rights actions.

etc. The Judicial Code also made the six-month limitation period applicable to petitions for the establishment of a deficiency judgment; actions under Section 6-111 of the Uniform Commercial Code (relating to limitations of actions and levies); and actions to enforce civil penalties against an employer for depriving an employee of employment or benefits or for threatening or otherwise coercing the employee because the employee was summoned to and served as an investigating grand juror. 42 Pa.Cons.Stat. Section 5522 b(2), (3), (4).

12. That the balance may in fact be tipped somewhat in favor of federal claimants is shown from an examination of the Pennsylvania Rules of Civil Procedure which require fact pleading rather than notice pleading as permitted by F.R.C.P. 8. Consequently, the burden of conducting a sufficient investigation and the drafting of pleadings meeting the requirements of the Pennsylvania procedural rules exceeds that which would be borne by a federal civil rights litigant. See Pa.R.Civ.P. 1019, 1041. 1061. 1091.

B. A state statute of limitations prescribing a six-month period for the commencement of certain judicial actions against public officials—including claims of employment discrimination on the basis of sex—provides a reasonable time for the commencement of such suits whether brought under state law or under Section 1983.

The six-month statute of limitations at issue is one which is expressly applicable to the commencement of judicial actions rather than administrative proceedings. It is a statute which would have barred this suit had it been commenced under state law in state court. *Knoll vs. School District of Springfield Township*, supra; *Clyde vs. Thornburgh*, supra; *Eshmont vs. Commonwealth*, supra. Although at first blush this aspect of the statute of limitations might seem relevant only to the second prong of the Section 1988 test—whether it is the appropriate statute (*Burnett*, supra, slip op. at 6)—it has been recognized by this Court that "the second and third steps of the Section 1988 inquiry shade into each other." *Id.*, slip op. at 11, n. 15.

Here, the limitation period applies to remedies judicially enforceable in the first instance, does not limit who may bring suit or the cause of action and does not preclude money damages or injunctive relief. For these reasons, its enactment should raise a presumption that the state legislature took into account the burdens borne by the parties to a suit governed by that limitation—the "practicalities involved in litigating federal civil rights claims. . . ." (*Burnett*, supra, slip op. at 8)—and found that limitation period reasonable. This judgment should be viewed as "more than a mere 'technical obstacle to be circumvented if possible.' (citation omitted)", *Tomanio*, supra, at 484, and should, "prima facie", be accorded deference by this Court. *Burnett*, supra, slip op. at 19 (Rehnquist, J., concurring).[13]

13. Historically, such deference has been accorded to state legislatures' determinations of limitations periods. See, for example, *Burrill vs. Locomobile Co.*, 258 U.S. 34 (1922); *Turner vs. New York*, 168 U.S. 90 (1897); *Mills vs. Scott*, 99 U.S. 25 (1878); *Terry vs. Anderson*, 95 U.S. 628 (1877). Although these cases did not arise in connection with suits brought under the federal civil rights acts, the issue in each of them was whether a state statute of limitation allowed an aggrieved party a reasonable time to sue. The thrust in each of the cases was that absent the provision of a reasonable time, the state limitation periods would be unconstitutional. The standard for measuring reasonableness applied in those cases should be viewed as analogous to the standard to be applied by the Court in this case.

The determination of the Pennsylvania state legislature that six months is a reasonable time within which to commence litigation—whether in state or federal court—is given support by the holding of the Court in *DelCostello vs. International Brotherhood of Teamsters*, 462 U.S. ____, No. 81-2386 (June 8, 1983). At issue in *DelCostello* was the appropriate statute of limitations to be applied to employees' suits against their employer and/or their union based on the employer's alleged breach of the collective bargaining agreement and the union's alleged breach of its duty of fair representation under the National Labor Relations Act. The cause of action in *DelCostello* was described as two claims "inextricably interdependent" in which the employee, to succeed against either the union or the company, had to establish both a breach of contract by the company and a breach of duty by the union. *DelCostello*, supra. Despite the complexity of the claim, the court applied a six-month statute of limitations to such actions. In this context only—to the extent that *DelCostello* impliedly recognized that a six-month limitation period was sufficient for the commencement of relatively complex federal litigation—the holding in *DelCostello* supports the judgment of the Pennsylvania State Legislature that the six-month period is reasonable here. See *Burnett*, supra, slip op. at 19-20 (Rehnquist, J., concurring). At the least, *DelCostello* cuts against any conclusion that the " 'practicalities' of litigation necessarily mean that a six-

month limitations period is an unreasonable time in which to bring a federal cause of action." *Burnett*, supra, slip op. at 20. (Rehnquist, J., concurring).[14]

Applying this reasoning to the present case, the six-month statute of limitations is reasonable. The nature of

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14. Similar conclusions have been reached by the several circuits (other than the Third Circuit in *Knoll*) which have squarely dealt with the question of whether a six-month state statute of limitations applicable to the commencement of judicial proceedings may properly be applied to civil rights actions. See *Hussey vs. Sullivan*, 651 F.2d 74 (1st Cir. 1981) (applying the Massachusetts statute of limitations for the commencement of judicial proceedings by a police officer alleging denial of promotion on improper grounds and seeking relief under 42 U.S.C. Section 1983, 1985 (3)); *Warner vs. Perrino*, 585 F.2d 171 (6th Cir. 1978) (applying Ohio's six-month statute of limitations for the commencement of a private judicial action by victims of housing discrimination to a Section 1982 claim). See also *Warren vs. Norman Realty Co.*, 513 F.2d 730 (8th Cir. 1975) and *Green vs. Ten Eyck*, 572 F.2d 1233 (8th Cir. 1978) (applying the 180-day limitation period for the commencement of judicial proceedings set forth in the Missouri discriminatory housing practices law to Section 1981 and 1982 claims without comment with respect to the reasonableness of the limitation period). Although the First Circuit determined that six-month limitations on the commencement of administrative proceedings were applicable to civil rights actions in *Burns vs. Sullivan*, 619 F.2d 99 (1st Cir. 1980), *Carter vs. Supermarkets General Corp.*, 684 F.2d 187 (1st Cir. 1982) and other cases which have been overruled by *Burnett*, supra, the First Circuit's reasoning that six months was not too short a period within which to commence judicial proceedings should still be seen as viable. See, e.g., *Hussey vs. Sullivan*, supra. This is the precise distinction that had been drawn by the Eighth Circuit prior to this Court's decision in *Burnett vs. Grattan*. Compare, *Warren vs. Norman Realty Co.*, supra, with *Chambers vs. Omaha Public School District*, 536 F.2d 222 (8th Cir. 1976) in which the Eighth Circuit rejected the application of a 180-day administrative limitation period noting that "Norman Realty drew a clear distinction between judicial and administrative avenues of relief." *Id.*, at 226. That the First Circuit lacked the prescience of the Eighth in this regard, should not undercut the soundness of its conclusion with respect to the reasonableness of a six-month limitation period.

the inquiry required to be made by this Court under Section 1988 is whether a state statute of limitations is "inconsistent" with the Constitution and laws of the United States, not whether this Court, if it were applying its own judgment, in the first instance, would adopt a limitations period equivalent to that adopted by the state legislature.

Where the state statute is applicable to the commencement of judicial proceedings, the legislature should be presumed to have taken "into account the burdens borne by the parties to a suit of that sort" and to have given due consideration to the precept that the "administration of justice is not well served by the filing of premature, hastily-drawn complaints." *Burnett*, supra, slip op. at 9 and at 8, n. 13. The legislature should also be presumed to have considered the interplay between the limitation period and the practicalities of litigation — the Plaintiff's recognition of the dimensions of the injury, the preparation involved, the need for counsel, the need for investigation, the payment of required filing fees and the filing and service of a complaint as well as the parties' responsibilities immediately following the commencement of suit. *Ibid.* For these reasons, arguments premised upon any asserted inadequacy of a six-month period based on these considerations, should be foreclosed. A contrary holding could be premised only upon this Court's substitution of its judgment for that of the legislature rather than an inquiry as to whether the result of the state legislature's judgment was inconsistent with the Constitution and laws of the United States. *Burnett*, supra, *Tomanio*, supra; *Robertson*, supra, *Johnson*, supra.

A similar disposition should be made with respect to any argument that there is a peculiarity to a Section 1983 action that should nevertheless preclude the application of the six-month limitation period. The acceptance of this type of argument would merely compound the problem by involving this Court not only with over-

ruling the judgment of the state legislature but also that expressed by Congress in Section 1988. *Johnson*, supra, at 464. Similarly, the acceptance of an argument that six months is too short for the commencement of federal claims generally would not only call into question the judgments of the state legislature and Congress but also the result reached by this Court in *DelCostello*, supra.[15]

For these reasons, there is no firm ground from which to draw a conclusion that a six-month limitation period applicable to certain Section 1983 claims is per se unreasonably short and the Court, therefore, should decline to overrule the judgment of the Pennsylvania State Legislature in that regard.

Even if the Court were to commence such an inquiry despite the apparent proscriptions imposed by Section 1988 and its own reasoning in prior cases, that inquiry would disclose no basis in the record of this case for finding that the six-month limitation period was unreasonable. Firstly, because the statute at issue is the residuary statute governing only certain actions against public officials, its applications are limited. Under Pennsylvania law it would not apply to actions — state or federal — sounding in defamation, assault and battery, personal

15. It should be noted that in the event of continuing violations, the Pennsylvania statute of limitations would not prevent deterrence of unlawful conduct by public officials or preclude federal courts from compelling them to "conform their practices to the nationally mandated policy of equal employment opportunity." *Johnson*, supra, at 467, n. 13. As noted in *Johnson*, present engagement in such conduct by public officials will necessarily mean that there are claimants now in a position either to file a Title VII charge or a Section 1983 suit. Thus, neither of the principal policies of Section 1983 are impaired by the Pennsylvania statute. Continuing violations can unquestionably be deterred under any circumstances. (Ibid.) Isolated violations will be deterred and compensation will be paid individual complainants if they "take the minimal steps necessary to preserve [their] claim", *Johnson*, supra, at 466, by the commencement of their suits within the applicable period. See *Tomanio*, supra, at 488, *Johnson*, supra, at 467, n. 13; *Robertson*, supra.

injury, or contract. See *Clyde vs. Thornburgh*, supra. See also *Polite vs. Diehl*, 507 F.2d 119, 122 (3d Cir. 1974) (en banc) (applying a Pennsylvania one-year statute to a Section 1983 claim analogous to false arrest and a two-year wrongful injury statute to claims analogous to assault and battery and the coercion of a guilty plea, under the pre-Judicial Code limitations schema.) Further, the type of injury alleged, its magnitude and consequences — the denial of appointment to a higher position and the consequent loss of increased pay, benefits and opportunities for future advancement — should have been easily and immediately recognizable (See *Delaware State College vs. Ricks*, 449 U.S. 250 (1980)), particularly in this case.[16] Certainly, all of these factors, together with the absence of any evidence or empirical data in the record to support a finding that a six-month period is unreasonably short, militate against such a finding.

Arguments that a six-month period is unreasonable also fail when balanced against the state policies sought to be fostered by statutes of limitations — policies which "have long been respected as fundamental to a well-ordered judicial system", *Tomanio*, supra, at 487, whether state or federal. *Tomanio*, supra, at 488. See also *Johnson*, supra; *Robertson*, supra. Here, because state and local governments are more likely to experience frequent changes in personnel than other employers, prompt assertion of claims is important. Because public officials' continued service is subject to the will of the electorate or the discretion of the elected officials who appoint them, even a short passage of time may result in the departure from government of the persons with

16. It should be noted that in a case such as this, the degrees and certifications held by each applicant as well as their respective experience, are matters of public record and that an individual applicant, therefore, knows or should know the merits of his or her credentials relative to the other applicants from the inception of the selection process.

knowledge of the circumstances surrounding the claim. This, in turn, would "impair the accuracy of the fact finding process." *Tomanio*, supra, at 487. Further, upon departure from government, former officials may be reluctant to cooperate fully, if at all, in the defense of claims burdening their successors or political opponents. Specifically with respect to cases involving discrimination in the hiring of public employees, each day of delay in commencing suit further establishes the person who was hired or promoted in place of the Complainant, in his or her position and entitles the hired or promoted employee to compensation, seniority, tenure and due process rights. Thus, in the event the public employer's conduct is ultimately found to be discriminatory, government service may be substantially disturbed, two salaries may be required to be paid for a single service and the public employer and the hired or promoted employee would have to commence the process of undoing the initial decision. With the prompt commencement of an action, a government employer would be better able to take steps to lessen or totally eliminate this problem. See *United States ex rel. Arant vs. Lane*, 429 U.S. 367, 372 (1919). The prompt assertion of the claims against the government will also promote sound finanical planning and permit the government to budget for the expenditures involved in defending against the claims or reimbursing successful claimants. These considerations in the context of this case, provide additional justification for respecting the state's choice.

Most significantly, the prompt assertion of claims by the filing of complaints of discrimination on the public record would foster deterrence of unlawful conduct by public officials. In addition to putting the governing body on notice[17] and, thus, enabling it to take corrective

17. The importance of notice of alleged, unlawful conduct is a recognized federal as well as state policy. See e.g., 42 U.S.C. Section 2000e-5(e); 117 Cong. Rec. 31972 (1971) (remarks of Rep. Erlenborn).

measures, prompt, well-founded accusations against public officials for discrimination in hiring or promotion on the basis of sex, would increase the likelihood that they would be accountable for their violations of the federal rights of others. If they are elected officials, and if the public knows of their conduct, it can respond at the next election by voting them out of office. If appointed officials are accused, the public body appointing them can respond by removing them from office. Absent prompt assertion of employment discrimination claims, no such sanction would be imposed upon the responsible officials who, in turn, could then continue their practices unnoticed.

CONCLUSION

For all of the foregoing reasons, the judgment of the Court of Appeals should be reversed. The Pennsylvania state six-month statute of limitations is applicable to this case. The statute applies uniformly to both state and federal claims alike. The time period for commencement of suit is not, per se, so unreasonably short as to effectively preclude an aggrieved person's access to the courts. The statute therefore should be "borrowed" under the provisions of 42 U.S.C. Section 1988 and applied to bar Respondent's Section 1983 claim in this case.

Respectfuly submitted,
WISLER, PEARLSTINE, TALONE,
CRAIG & GARRITY

By: _____
Charles Potash
Harris F. Goldich

Office - Supreme Court, U.S.
FILED
AUG 15 1984
ALEXANDER L. STEVAS,
CLERK

8190

No. 82-1889

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a political subdivision of the Commonwealth of Pennsylvania; ROMAN, LOUIS A., Superintendent, Springfield Township School District; LAWN, JOHN J., HANSHAW, MARIE M., COMMINS, JAMES A., GOREN, SARA LEE, HOCH JR., WILLIAM C., HOGUE JR., E. BURKE, KALISH, SALLY, LIEBERMAN, MAX L. AND TOBIN, HARPUR M., Individually and as members of the Board of School Directors, Springfield Township School District,

Petitioners

v.

KNOLL, MADELIN H.,

Respondent

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit, Petition for Certiorari filed May 20, 1983, Certiorari Granted July 2, 1984.

JOINT APPENDIX

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Apr. 1, 1981 — Plaintiff's Complaint filed.

June 3, 1981 — Defendants' Answer filed.

Aug. 9, 1981 — Defendants' Motion for Summary Judgment, Brief and Certificate of Service filed.

Sept. 10, 1981 — Plaintiff's Brief in Opposition to Motion for Summary Judgment filed.

Mar. 12, 1982 — Defendants' Supplemental Brief in Support of Motion for Summary Judgment filed.

Mar. 15, 1982 — Opinion and Order of the United States District Court granting Summary Judgment and entering Judgment in favor of Defendants and against the Plaintiff filed.

Apr. 16, 1982 — Plaintiff's Notice of Appeal from the Final Order and Judgment filed April 15, 1982, filed.

Jan. 27, 1983 — Opinion of the United States Court of Appeals for the Third Circuit filed.

Jan. 27, 1983 — Judgment of the United States Court of Appeals filed.

Feb. 10, 1983 — Defendants' Petition for Rehearing under F.R.A.P. 40 and Suggestion for Rehearing In Banc under F.R.A.P. 35 filed.

Feb. 23, 1983 — Order Denying Rehearing and Statement of Judge Adams sur Denial of Petition for Rehearing filed.

May 20, 1983 — Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit filed.

July 2, 1984 — Order Allowing Certiorari filed.

(PLEASE PRINT OR TYPE)

APPROVED BY GAO B — 180541 (RO511) Expires 1-31-81	**CHARGE OF DISCRIMINATION** IMPORTANT: This form is affected by the Privacy Act of 1974, see Privacy Act Statement on reverse before completing it.	CHARGE NUMBER(S) (AGENCY USE ONLY) ☐ STATE/LOCAL AGENCY ☐ EEOC 031810642

Equal Employment Opportunity Commmission and

(State or Local Agency)

NAME (Indicate Mr., Ms. or Mrs.)
Ms. Madelin Knoll

HOME TELEPHONE NUMBER (Indicate area code)
215-646-6214

STREET ADDRESS
1432 Fort Washington Avenue

CITY, STATE, AND ZIP CODE
Ambler, Pa. 19002

COUNTY
Montgomery

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME. (If more than one list below).

NAME
Springfield Township School District

TELEPHONE NUMBER (Include area code)
215-233-6000

STREET ADDRESS
1901 E. Paper Mill Road

CITY, STATE, AND ZIP CODE
Oreland, Pa. 19075

NAME

TELEPHONE NUMBER (Include area code)

STREET ADDRESS

CITY, STATE, AND ZIP CODE

CAUSE OF DISCRIMINATION BASED ON MY (Check appropriate box(es))

☐ RACE ☐ COLOR ☒ SEX female ☐ RELIGION ☐ NATIONAL ORIGIN ☐ OTHER (Specify)

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*
September 1980

THE PARTICULARS ARE:

A-2

CHARGE OF DISCRIMINATION	CHARGE NUMBER(S) AGENCY USE ONLY STATE/LOCAL AGENCY EEOC 031810642

Charging Party _____ Knoll

Respondent _____ Springfield Township School District.

I was hired by Respondent in 1968. In July 1979, I applied for a position as Administrative Assistant. I was not selected for the position. In August 1979, Respondent promised to create an administrative position for me. On May 28, 1980, I was informed that no position would be created for me. Because I was denied the position of Administrative Assistant, coupled with Respondent's failure to create an administrative position for me, as promised, I was denied the opportunity to be considered for the position of Assistant Superintendent in September 1980.

I was informed by Lou Roman, Superintendent, that an administrative position would be created for me. Respondent gave no reason for not creating the administrative position.

I believe that I have been discriminated against because of my sex, female, for the following reasons:

1. In July 1979, I applied for a position as Administrative Assistant. I was fully qualified and certified for the position. I was not selected. Frank Romano (M), who was not certified, was selected for the position as Administrative Assistant.

2. In August 1979, Lou Roman, Superintendent, orally promised to create an administrative position for me during school year 1979-80.

3. On May 28, 1980, I was informed by a letter from Mr. Roman that no new administrative position had been created nor would there be one created during school year 1980-1981.

4. In September 1980, Frank Romano, Administrative Assistant, was promoted to Assistant Superintendent.

5. It is my belief that had I been selected for the position of Administrative Assistant in July 1979, I would have been promoted to Assistant Superintendent in September 1980.

6. Respondent employs approximately seven (7) employees in top administrative positions of whom only one (1) is female.

A-3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
PHILADELPHIA DISTRICT OFFICE
127 N. FOURTH STREET
PHILADELPHIA, PENNSYLVANIA 19106

031810642 Charge Number:

Madelin Knoll Charging Party

and

Springfield Township
School District Respondent

DISMISSAL

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission, the following determination dismissing the charge because it was untimely filed.

A charge of discrimination such as this must be filed within 180 days after the alleged violation. This charge was received more than 180 days after the date of the alleged violation. I dismiss the charge because it was untimely filed. Thus I make no determination as to whether or not Respondent actually engaged in unlawful conduct under Title VII as alleged in the charge. Such determination may be made by the Commission only with respect to charges filed within the time limitation set in Title VII.

This dismissal concludes the Commission's processing of this charge. Should the Charging Party wish to pursue this matter further, one may do so by filing a private action in Federal District Court against the Respondent named above within 90 days of receipt of this letter and by taking the other procedural steps set out in the enclosed NOTICE OF RIGHT TO SUE.

On behalf of the Commission

Johnny J. Butler
District Director

1/22/81
(date)

Enclosures: (2)
Notice of Right to Sue
Copy of the Charge

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

(Dismissal)

To:	From:
Ms. Madelin Knoll 1432 Fort Washington Avenue Ambler, PA 19002	Equal Employment Opportunity Commission Philadelphia District Office 127 North Fourth Street Philadelphia, Pennsylvania 19106

CHARGE NUMBER:	EEOC REPRESENTATIVE:	TELEPHONE NUMBER:
031810642	Legal Unit	215-597-0881

(See Section 706(f)(1) and (f)(3) of the Civil Rights Act of 1964 on reverse of this form.)

This is your NOTICE OF RIGHT TO SUE. It is issued because the Commission has dismissed your charge. Your charge was dismissed for the following reason:

☒ No jurisdiction, therefore, the Commission has no authority to process your charge further.
☐ No reasonable cause was found to believe that the allegations made in your charge are true, as indicated in the attached determination.
☐ You failed to provide requested necessary information, failed or refused to appear or be available for necessary interviews/conferences or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had more than 30 days in which to respond to our final written request.
☐ The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to your last known address.
☐ The respondent has made a written settlement offer which affords full relief for the harm you alleged. At least 30 days have expired since you received actual notice of this settlement offer.

The issuance of this NOTICE OF RIGHT TO SUE terminates the Commission's processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in United States District Court. IF YOU DECIDE TO SUE, YOU MUST DO SO WITHIN NINETY (90) DAYS FROM THE RECEIPT OF THIS NOTICE OF RIGHT TO SUE; OTHERWISE YOUR RIGHT TO SUE IS LOST.

If you cannot afford or have been unable to obtain a lawyer to represent you, you should be aware that the Civil Rights Act of 1964, ... mended, 42 U.S.C. 2000e-5(f)(1) permits the U. S. District Court having jurisdiction in your case to appoint a lawyer to represent you. If you plan to request appo... ment of a Lawyer to represent you, you must make this request of the U. S. District Court in the form and manner it requires. *Your request to the U. S. District Court should be made well in advance of the end of the 90-day period mentioned above.*

You may contact the EEOC representative named above if you have any questions about your legal rights including advice on which U. S. District Court has jurisdiction to hear your case if you need to inspect and copy information contained in the Commission's case file.

An information copy of this Notice of Right to Sue has been sent to the respondent(s) shown below.

On Behalf of the Commission

January 28, 1981 — *(Date)*

Johnny J. Butler, District Director — *(Typed Name and Title of EEOC Official)*

cc: *Springfield Township School District*
Theodore M. Lieverman, Esq.
Charles Potash, Esq.

EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MADELIN H. KNOLL, *Plaintiff*	:	
vs.	:	
SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a political subdivision of the Commonwealth of Pennsylvania; LOUIS A. ROMAN, Superintendent, Springfield Township School District; JOHN J. LAWN, MARIE M. HANSHAW, JAMES A. COMMINS, SARA LEE GOREN, WILLIAM C. HOCH, JR., E. BURKE HOGUE, JR., SALLY KALISH, MAX L. LIEBERMAN, and HARPUR M. TOBIN, individually and as members of the Board of School Directors, Springfield Township School District, *Defendants*	:	Civil Action No. 81-1626

DEFENDANT'S ANSWER TO COMPLAINT

The above-named defendants, by their attorneys, Wisler, Pearlstine, Talone, Craig, & Garrity, Esquires, respond to Plaintiff's Complaint, as follows:

FIRST DEFENSE

This court lacks subject matter jurisdiction under the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5(f)(3), because no complaint was filed by or on behalf of plaintiff with the Federal Equal Employment Opportunity Commission within 180 days of the alleged discriminatory acts (see, Complaint, exhibit "B"). This court lacks subject matter jurisdiction under 28 U.S.C. Sections 1331 or 1343 for the reason that plaintiff's complaint fails to present any other colorable federal claims

or any alleged deprivation of any other federal right, privilege or immunity. This court lacks subject matter jurisdiction under 28 U.S.C. Section 2201 and 2202 for the reason that those sections do not confer any independent bases for federal court jurisdiction.

SECOND DEFENSE

This suit should be dismissed as to defendants Roman, Lawn, Hanshaw, Commins, Goren, Hoch, Hogue, Kalish, Lieberman and Tobin, for lack of jurisdiction over the person, for the reason that plaintiff has failed to cause service of the Summons and Complaint to be made upon them in accordance with the provisions of F.R.C.P. 4 (d)(1).

THIRD DEFENSE

The complaint should be dismissed as to defendant, Goren, for the reason that she was not a member of the Board of School Directors of the School District of Springfield Township at any time relevant to Plaintiff's asserted claims.

FOURTH DEFENSE

Plaintiff's complaint should be dismissed, for failure to state claims upon which relief can be granted, insofar as it seeks to assert claims against the individual defendants, in their individual as opposed to official capacities, for the reason that they possess an absolute and/or qualified immunity from suit relative to the exercise of the discretion vested in them as officials or members of the Board of School Directors of the School District.

FIFTH DEFENSE

Plaintiff's complaint otherwise fails to state claims upon which relief can be granted as to all defendants.

SIXTH DEFENSE

Defendants respond to the factual allegations contained in Plaintiff's Complaint, as follows:

1. Denied.
2. Denied.
3. Admitted.
4. Admitted.
5. Denied in part. It is denied that defendant, Roman, may properly be sued in his individual capacity.
6. Denied in part. It is denied that defendant, Lawn, may properly be sued in his individual capacity.
7. Denied in part. It is denied that defendant, Hanshaw, may properly be sued in her official capacity.
8. Denied in part. It is denied that defendant, Commins, may properly be sued in his individual capacity.
9. Denied. Defendant Goren, was not a member of the Board of School Directors at any time relevant to plaintiff's asserted claims. It is further denied that defendant Goren may properly be sued in her individual capacity.
10. Denied in part. It is denied that defendant, Hoch, may properly be sued in his individual capacity.
11. Denied in part. It is denied that defendant, Hogue, may properly be sued in his individual capacity.
12. Denied in part. It is denied that defendant, Kalish, may properly be sued in her individual capacity.
13. Denied in part. It is denied that defendant, Lieberman, may properly be sued in his individual capacity.
14. Denied in part. It is denied that defendant, Tobin, may properly be sued in his individual capacity.
15. Admitted.
16. Admitted.
17. It is admitted that plaintiff applied for a vacancy as Administrative Assistant to the Superintendent in July, 1979, and that she was properly certified for the position. The remainder of the averments in paragraph 17 are denied.

18. It is admitted that Frank Romano was appointed to the position of Administrative Assistant and that the Superintendent notified plaintiff of this on or about August 2, 1979. The remaining averments of paragraph 18 are denied.
19. It is denied that the Superintendent advised plaintiff at any time that he would create a new administrative position or that he would consider plaintiff as an applicant for that position if it was created. On the contrary, the Superintendent advised plaintiff that with the reduction in staff, there would probably be cuts in administrative positions. Plaintiff volunteered to send to the Superintendent a suggestion for the creation of new administrative positions to utilize her expertise. This list was sent to and was reviewed by the Superintendent who advised plaintiff that he would not recommend the creation of any of these positions suggested.
20. Admitted.
21. Denied.
22. Denied.
23. Denied.
24. Denied. Defendant employs eleven (11) top administrators, two (2) of which are women.
25. Denied. The allegations of paragraph 25 that defendants engaged in illegal and discriminatory acts and that plaintiff has been deprived of further opportunities for professional advancement are denied. The allegations of paragraph 25 that plaintiff has suffered alleged embarrassment, emotional duress, and mental pain and anguish are further denied for the reason that defendants are without sufficient knowledge or information to form a belief as to their truth. Further, if plaintiff experienced such conditions, it is denied that any of the defendants' conduct or acts caused such conditions.
26. Denied.

27. Admitted that plaintiff filed a charge with the Philadelphia Office of Federal Equal Employment Opportunity Commission on December 12, 1980. The remaining averments of paragraph 27 are denied for the reason that the complaint speaks for itself. By way of further answer, it is averred that the complaint filed with the Federal Equal Employment Opportunity Commission was not timely filed for the reason that the alleged discriminatory acts occurred more than 180 days prior to the filing of that complaint.

28. Admitted. By way of further answer, the Commission dismissed Plaintiff's charge for the reason that it was filed more than 180 days after the alleged discriminatory acts and that the Commission, therefore, lacked jurisdiction.

29. Denied.

30. Denied.

31. Denied.

WHEREFORE, defendants pray that this court dismiss Plaintiff's complaint, with prejudice, and enter judgment in their favor together with an award of all costs and attorneys fees incurred by them relative to the defense of this suit.

WISLER, PEARLSTINE,
TALONE, CRAIG & GARRITY

BY: _____
Charles Potash I.D. #09282
Harris F. Goldich I.D. #17686
Attorneys for Defendants
515 Swede Street
Norristown, PA 19401
(215) 272-8400

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MADELIN H. KNOLL,	:	
Plaintiff	:	Attorney I.D. No. 09282
vs.	:	
SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a political subdivision of the Commonwealth of Pennsylvania; LOUIS A. ROMAN, Superintendent, Springfield Township School District; JOHN J. LAWN, MARIE M. HANSHAW, JAMES A. COMMINS, SARA LEE GOREN, WILLIAM C. HOCH, JR., E. BURKE HOGUE, JR., SALLY KALISH, MAX L. LIEBERMAN, and HARPUR M. TOBIN, individually and as members of the Board of School Directors, Springfield Township School District,	:	CIVIL ACTION No. 81-1626
Defendants	:	

MOTION FOR SUMMARY JUDGMENT

Defendants, by their Attorneys, Wisler, Pearlstine, Talone, Craig & Garrity, Esquires, herewith move this Court for the dismissal of all of Plaintiff's asserted claims against them, for lack of subject matter jurisdiction, or, in the alternative, for the entry of judgment in their favor as to all of Plaintiff's asserted claims against them, on the ground that the pleadings and exhibits attached thereto show that there is no genuine issue as to any material fact which would permit Plaintiff to recover, as a matter of law, for the following reasons:

1. This court lacks subject matter jurisdiction as to all of Plaintiff's asserted claims under the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5

(f)(3), in that no complaint was filed by or on behalf of Plaintiff with the Federal Equal Employment Opportunity Commission within 180 days of the alleged discriminatory acts (see, Complaint, Exhibit "A", at p. 5; Exhibit "B");

2. This court lacks subject matter jurisdiction as to Plaintiff's asserted Title VII claims against the individual Defendants because no Complaint was filed by or on behalf of Plaintiff with the EEOC, naming them as respondents, at any time. (see Complaint, Exhibits "A" and "B");

3. This court lacks subject matter jurisdiction under 28 U.S.C. Section 1331 or 1343 for the reason that Plaintiff's other asserted federal claims are not colorable because of her failure to timely pursue her Title VII remedy and her failure to either give written notice or commence suit within 180 days of the alleged discriminatory act, as required by then applicable Pennsylvania statutes of limitations;

4. This court lacks subject matter jurisdiction of Plaintiff's asserted claims for punitive damages for the reason that said claims are not colorable under the holdings of the United States Supreme Court in *City of Newport vs. Fact Concerts, Inc.* , U.S. , 49 L.W. 4860 (1981); and *Great American Federal Savings and Loan Association vs. Novotny*, 442 U.S. 366 (1978);

5. This court lacks subject matter jurisdiction as to Plaintiff's asserted claims against the individual Defendants, in their individual capacities, for the reason that Plaintiff has alleged no bad faith, recklessness or malice;

6. In the alternative, in the event that this court determines that it has subject matter jurisdiction over Plaintiff's asserted claims, it should, for the reasons set forth above, enter judgment in Defendants' favor on the ground that Plaintiff's Complaint fails to state claims upon which relief can be granted, as a matter of law.

WHEREFORE, Defendants above named pray that this court dismiss all of Plaintiff's asserted claims against them for lack of subject matter jurisdiction, or, in the alternative, enter judgment in their favor and against Plaintiff as to all of Plaintiff's asserted claims.

WISLER, PEARLSTINE, TALONE, CRAIG & GARRITY

BY: _____

Charles Potash, Esquire
Harris F. Goldich, Esquire,
Attorneys for Defendants
515 Swede Street
Norristown, PA 19401
(215) 272-8400

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by mailing a copy of same, first class mail, postage prepaid to the following:

Theodore M. Lieberman, Esquire
1429 Walnut Street
Philadelphia, PA 19102

Charles Potash

Dated: August 17, 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MADELIN H. KNOLL	:	
	:	
vs.	:	Civil Action
SPRINGFIELD TOWNSHIP	:	
SCHOOL DISTRICT, et al.	:	No. 81-1626

NOTICE OF APPEAL

Notice is hereby given that Madelin H. Knoll, Plaintiff above mentioned hereby appeals to the U. S. Court of Appeals for the Third Circuit from the final Order entering judgment against her in favor of the Defendants on the 17th day of March, 1982.

/S/

1005 Penllyn Pike
Spring House, PA 19477
Attorney for Plaintiff

BEST AVAILABLE COPY

Office - Supreme Court, U
FILED
AUG 16 1984
ALEXANDER L. STEVA
CLERK

8192

NO. 82-1889

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a Political Subdivision of the Commonwealth of Pennsylvania; ROMAN, LOUIS A., Superintendent, Springfield Township School District; LAWN, JOHN J., HANSHAW, MARIE M., COMMINS, JAMES A., GORDEN, SARA LEE, HOCK, JR., WILLIAM C. HOGUE, JR., E. BURKE, KALISH, SALLY, LIEBERMAN, MAX L. and TORBIN, HARPUR M., Individually and as Members of the Board of School Directors, Springfield Township School District,

Petitioners

vs.

KNOLL, MADELIN H.,

Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF AMICI CURIAE ON BEHALF OF PENNSYLVANIA, HAWAII, KANSAS, MISSOURI, NEBRASKA, NEW HAMPSHIRE, NORTH CAROLINA, AND OHIO IN SUPPORT OF PETITIONERS

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Attorney General

ANDREW S. GORDON
Senior Deputy Attorney General
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STATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals erred in holding that Pennsylvania's six-month statute of limitations for actions against public officials may not be borrowed for purposes of civil rights actions because the state statute of limitations is too short and, therefore, inherently conflicts with the policies underlying the civil rights statutes?

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STATUTES INVOLVED

Section 1 of the Civil Rights Act of 1871, as amended, 42 U.S.C. Section 1983, provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable, in equity, or other proper proceeding for redress.

42 U.S.C. Section 1988, provides, in pertinent part, as follows:

> The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be

exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

Section 5522 (b)(1) of the Pennsylvania Judicial Code, 42 Pa. Cons. Stat. §5522 (b)(1), provides as follows:

(b) Commencement of Action Required - the following actions and proceedings must be commenced within six months:

(1) An action against any officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this subchapter.

INTEREST OF THE AMICI CURIAE

This case presents the question whether a federal court properly may reject application of a state statute of limitations, which it is required to borrow for purposes of a civil rights action, because the court determines that the limitations period is too short. The decision of the Court of Appeals in this case, refusing to apply Pennsylvania's six-month statute of limitations to an employment discrimination claim brought pursuant to 42 U.S.C. §1983, will have a broad impact on the states joining in this brief.

State officials are, perhaps, the most frequent defendants in federal civil rights actions. Although the civil rights statutes represent a strong federal policy to encourage

vindication of civil rights, Congress likewise has expressed the firm view that certain interstices in the civil rights scheme, including the prescription of limitations periods, are to be filled by application of state law. See 42 U.S.C. §1988. The amici have a substantial interest in the vindication of their delegated responsibility to choose generally applicable limitations for actions.

The Third Circuit's decision here, if permitted to stand, will have a considerable effect on amici. In addition to the Pennsylvania statute at issue here, there are a number of state statutes of limitations which are less than one year and which could be

applied to civil rights actions.[1] With respect to these statutes, the states have made carefully considered policy choices in balancing the interests of potential plaintiffs against the policy of repose. The Third Circuit's decision here undermines the states' ability to exercise the discretion accorded them by Congress to make these policy choices. For that reason, amici have a substantial interest in the resolution of this case.

---

[1] See, e.g., ILL. REV. STAT. ch. 68 §7-102 and 103 (180-day limitation; civil rights violation); IND. CODE ANN. §34-416.5-7 (180-day limitation; political subdivision claim).

SUMMARY OF ARGUMENT

Pursuant to 42 U.S.C. §1988 and a long line of decisions of this Court, state statutes of limitations which would be applied to analogous actions in state court are binding rules of law in federal civil rights actions. Only if a state statute conflicts with the Constitution or the Civil Rights Acts may it be disregarded.

Both the District Court and the Court of Appeals properly concluded that Pennsylvania's six-month statute of limitations for actions against public officials (42 Pa. Cons. Stat. § 5522 (b)(1)) was the appropriate limitation for this employment discrimination action. But the Court of Appeals' conclusion that the statute could not apply because a six-month limitations period conflicts with the remedial purposes of 42 U.S.C. §1983 failed to take account of prior

decisions of this Court and Congressional action in related areas.

The policy of repose which statutes of limitations reflect has strong roots in the federal system. The Court routinely has utilized state limitations where no federal one is prescribed. This unbroken line of decision requires rejection of the state limitation only if it discriminates against federal rights or it is manifestly so unreasonably short as to amount to a denial of justice. Here there is no question of discrimination. Moreover, Congress and this Court have unhesitatingly applied six-month limitations to actions every bit as complex as a civil rights case.

A statute such as Section 1983 and a limitations period for bringing the action are inherently in conflict. The civil rights statute provides a

broad remedy and a limitations statute cuts off the remedy. But if the Court is to be faithful to its precedents and the Congressional direction embodied in 42 U.S.C. §1988, it must reverse the decision of the Court of Appeals and permit application to civil rights claims of Pennsylvania's six-month limitation.

ARGUMENT

PENNSYLVANIA'S SIX-MONTH STATUTE OF LIMITATIONS FOR ACTIONS AGAINST PUBLIC OFFICERS IS CONSISTENT WITH THE CIVIL RIGHTS STATUTES BECAUSE IT APPLIES GENERALLY TO STATE AND FEDERAL CAUSES OF ACTION AND IT GIVES PLAINTIFFS A REASONABLE TIME TO SUE.

The narrow question in this case is whether a federal court is required to reject the application of a state statute of limitations to a civil rights claim because, in the court's view, the limitations period is too short. The Court of Appeals in this case examined the basic policy underlying the civil rights statutes, which it found to be the creation of a supplementary federal remedy for state action infringing upon federally protected rights, and concluded that a relatively short statute of limitations conflicts with the "remedial spirit" of the Civil

Rights Acts. Pet. App.[2] A-9 - A-10. Because the court failed to accord state law the respect which Congress has mandated and, also, because the court thoroughly ignored the policies which support statutes of limitations generally (and Pennsylvania's six-month statute in particular), the reasoning of the Court of Appeals is flawed.

The civil rights statute at issue here, 42 U.S.C. §1983, has no statute of limitations. It is settled law that, pursuant to 42 U.S.C. §1988,[3] the federal courts will apply

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[2]"Pet. App." refers to the appendix to the petition for certiorari filed in this case.

[3]42 U.S.C. §1988 provides, in pertinent part, as follows:

> [I]n all cases where [the Civil Rights Acts] are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses

FOOTNOTE CONTINUED ON NEXT PAGE.

to §1983 claims "the state law of limitations governing an analogous cause of action." Board of Regents v. Tomanio, 446 U.S. 478, 483-484 (1980), quoted with approval in Burnett v. Grattan, No. 83-264 (June 27, 1984), slip op. at 7; see also Johnson v. Railway Express Agency, 421 U.S. 454, 469 (1975) ("that [statute of limitations] which the state would apply if the action had been brought in state court") (Marshall, J., concurring in part and dissenting in part). Here the Court of Appeals held, properly in our

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FOOTNOTE 3 CONTINUED

against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause.

view, that Pennsylvania's statute requiring that actions against public government officers be commenced within six months is the limitation statute which would be applied if the action were brought in state court.[4] Pet. App. A-8. The question then left for resolution is what the Court labelled in Burnett v. Grattan, supra, as the "third step" in the Section 1988 inquiry - whether the state rule is inconsistent with federal law. Slip op. at 6, 11 n.15.

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[4]Both generally as to questions of state law, and with respect to the particular task of choosing the applicable state statute of limitations, the Court has accepted the interpretation concurred in by a court of appeals and district court. Runyon v. McCrary, 427 U.S. 160, 181 (1976); Bishop v. Wood, 426 U.S. 341, 346, and n.10 (1976). Here, both courts below held that the six-month statute is the one a state court would apply if Knoll's claim had been filed there. Pet. App. A-8, A-27.

Of course, it is clear that Pennsylvania's statute does not directly conflict with the Civil Rights Acts, nor do we understand respondents to have asserted that the limitations statute is unconstitutional. But this is not the end of the inquiry. As the Court has repeatedly emphasized, a state statute will not be borrowed for purposes of the civil rights statutes if it is inconsistent with the policies underlying §1983. See, e.g., Board of Regents v. Tomanio, supra, 446 U.S., at 487; Johnson v. Railway Express Agency, supra, 421 U.S., at 465. "In order to gauge consistency, of course, the state and federal policies which the respective legislatures sought to foster must be identified and compared." Board of Regents v. Tomanio, supra, 446 U.S., at 487.

Statutes of limitations are statutes of repose. They "inevitably reflect a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." Johnson v. Railway Express Agency, supra, 421 U.S., at 463-464. The passage of time after the events giving rise to the cause of action necessarily affects adversely the reliability of the fact-finding process and creates settled expectations. Board of Regents v. Tomanio, supra, 446 U.S., at 487.

Pennsylvania's statute prescribing a relatively short limitations period for actions against public officers reflects the legislature's judgment that the policies of safeguarding

the efficacy of the fact-finding process and precluding the overturning of settled expectations are of particular importance for public officers.[5] Perhaps more than in any other endeavor, government has a constantly changing face. Public officers frequently have all too brief tenures before they move on to another government post or into the private sector. These changes in the policy-making positions in government, moreover, often are the result of philosophical rifts or changes in political party domination. The net result of this process is that circum-

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[5]That the statute is premised on the policies outlined in the text, and not on the general policy of protecting the government from stale claims, is underscored by the fact that the six-month limitation applies to officers, but not to government entities.

stances often change dramatically in government in a short period of time. Public officers depart the scene taking with them both their knowledge of the relevant facts and their incentive for cooperating in assisting the government's defense.

Moreover, this Court has stressed "[t]he importance of policies of repose in the federal, as well as in the state system." Board of Regents v. Tomanio, supra, 446 U.S., at 488. The strength of this federal policy is reflected in this Court's repeated application of state limitations periods to federal claims, even federal claims over which federal court jurisdiction is exclusive. See, e.g., Auto Workers v. Hoosier Corp., 383 U.S. 696 (1966) (Labor Management Relations Act); Chattanooga Foundry v. Atlanta, 203 U.S. 390 (1906) (Sherman Act);

Campbell v. Haverhill, 155 U.S. 610 (1895) (Patent Act); see also Adams v. Woods, 6 U.S. (2 Cranch) 336, 342 (1805) (the absence of a statute of limitations "would be utterly repugnant to the genius of our laws.").

The Court has identified the "two principal policies embodied in §1983 as deterrence and compensation." Board of Regents v. Tomanio, supra, 446 U.S., at 488. To paraphrase the Court in Tomanio, these policies are not undermined by the rule at issue here for plaintiffs can secure damages, "thereby recovering compensation and fostering deterrence" if they merely file suit within the limitations period. 446 U.S., at 488.

Admittedly, it is tempting to conclude, as did the Court of Appeals here, that the policies of deterrence and compensation will be best served by

applying to civil rights actions the most generous state limitations period. But this approach fails for a number of reasons. First, this Court has rejected the proposition that the state rule most consistent with the Civil Rights Acts always is that rule which is most favorable to the plaintiff.

> A state statute cannot be considered "inconsistent" with federal law merely because the statute causes the plaintiff to lose the litigation. If success of the §1983 action were the only benchmark, there would be no reason at all to look to state law, for the appropriate rule would then always be the one favoring the plaintiff, and its source would be essentially irrelevant. But §1988 quite clearly instructs us to refer to state statutes; it does not say that state law is to be accepted or rejected based solely on which side is advantaged thereby.

Robertson v. Wegmann, 436 U.S. 584, 593 (1978).

Secondly, in the somewhat analogous context of qualified immunity

for public officials, the Court has not hesitated to apply to civil rights cases the common law rule granting immunity from damages to government officials exercising discretionary functions. See Scheuer v. Rhodes, 416 U.S. 232 (1974); Pierson v. Ray, 386 U.S. 547 (1967). Viewing the matter essentially as one of statutory construction, the Court found "no clear indication that Congress [in enacting §1983] meant to abolish wholesale all common-law immunities." Pierson v. Ray, supra, 386 U.S., at 554. So despite the fact that qualified immunity defeats even the most timely-filed and meritorious action for damages, the Court has found that the policies expressed in the immunity doctrine - "the injustice of subjecting to liability [public officials who must] . . . exercise discretion" and

the risk that potential liability will deter swift action - although obviously to some degree in conflict with the policies of compensation and deterrence, nevertheless outweigh those interests. Similar considerations apply here.

We have outlined above the strong policies of repose both state and federal, which support application of state statutes of limitations where no federal limitation is prescribed. The Court recognized and applied to federal claims the rule of repose long before enactment of the civil rights statutes. See cases collected in Bauserman v. Blunt, 147 U.S. 647, 652-653 (1893). Much like its conclusion with respect to qualified immunity for state officials, the historical application of state limitations to federal claims led inexorably to the conclusion that, in

the face of Congressional silence, there is nothing "peculiar to a federal civil rights action that would justify special reluctance in applying state law." Johnson v. Railway Express Agency, supra, 421 U.S., at 464. See also Runyon v. McCrary, 427 U.S. 160, 180 (1976) (silence of Congress interpreted as adopting federal policy to apply state limitations).

We recognize that this "borrowing rule" necessarily is limited by the Section 1988 command that a "borrowed" rule not be inconsistent with federal law. Prior decisions of this Court give some guidance for resolution of the consistency question raised in this case. In Campbell v. Haverhill, 155 U.S. 610 (1895) the Court confronted the question whether state limitations may apply to patent actions. In holding that the state

rules apply to those exclusively federal claims, the Court's holding was not unqualified - state statutes of limitations which discriminate against federal claims or which fail to provide a reasonable time for commencement of the action will not be applied. Id., at 615. Recently in dictum, the Court has reiterated the principles of Campbell in the context of civil rights claims. See Burnett v. Grattan, supra, slip op. at 11, n.15 (majority opinion); 18 (Rehnquist, J., concurring in the judgment). It is clear in this case that Pennsylvania's limitations statute evidences no hostility to federal rights - it applies equally to federal and state law claims against public officers. Both courts below specifically held that the statute would be applied to a state law claim brought in state court. Pet. App. A-8,

A-27. The remaining question then is whether the statute prescribes a limitation period which is unreasonable.

Again, in answering this question we have the benefit of guidance from prior decisions by the Court. When borrowing a particular state limitations period "a federal court is relying upon the State's wisdom," Johnson v. Railway Express Agency, supra, 421 U.S., at 464, in weighing "the burdens borne by the parties to a suit of that sort." Burnett v. Grattan, supra, slip op. at 9. Justice Holmes, in another context, properly expressed the limited role of the courts in assessing the legitimacy of legislative line-drawing:

> When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to

> be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself, without regard to the necessity behind it, the line or point seems arbitrary. It might as well, or nearly as well, be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.

Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 41 (1928) (concurring opinion). More specifically, with regard to the standard for review of a legislature's choice of a limitations period, the Court had this to say:

> "[W]hat shall be considered a reasonable time must be settled by the judgment of the legislature, and the courts will not inquire into the wisdom of its decision in establishing the period of legal bar, unless the time allowed is manifestly so insufficient that the statute becomes a denial of justice."

Texaco, Inc. v. Short, 454 U.S. 516, 527, n.21, (1982) quoting Wilson v. Iseminger, 185 U.S. 55, 63 (1902). See also Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314 (1945)(statute of limitations "subject to a relatively large degree of legislative control").

The Court's decision just last term in Burnett v. Grattan, supra, is consistent with our analysis here. The question in Burnett was whether a state administrative statute of limitations was an appropriate limitation for a federal civil rights action. Slip op. at 1. In concluding that it was not, the Court relied upon the "functional differences" between the state administrative mechanism and federal civil rights actions - civil rights actions are enforceable in court and are broad in their coverage, while the state

proceeding was of a more informal nature and covered only a narrow range of conduct. Slip op. at 7-9. The Court noted that a statute of limitations reflects a legislative weighing of the various, sometimes conflicting, policies which underly the cause of action on one hand and the limitations period on the other. Slip op. at 9-10. The Maryland statute examined in Burnett was not appropriate for application to a federal civil rights action because, as a unanimous Court concluded, it did not represent a legislative weighing of the burdens of preparing for in-court litigation. Slip op. at 9-10 (majority opinion); 14 (Powell, J., concurring in the judgment); 20-21 (Rehnquist, J., joined by Burger, C.J., and O'Connor, J., concurring in the judgment).

Although it is clear that the Court in Burnett was not presented with the precise question raised in this case (slip op. at 11, n.15), it is equally apparent that respondents will rely on the Court's discussion of the "practicalities"[6] of civil rights litigation to support their position here. But the issue of "practicalities" is presented here, if at all, in a light entirely different than in Burnett. Here the legislature, having

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[6]We agree with Justice Rehnquist's observation concurring in Burnett (slip op. at 16) and Judge Adams' statement dissenting from the denial of rehearing in banc in this case (Pet. App. A-34-A35) that the practicalities of filing a federal court complaint are hardly staggering. Federal pleading rules are far from stringent, see Fed. R.Civ. P. 8(a), and the day long since has passed when the average person was unaware that the federal courts had the power to grant relief on the broad range of claims falling within the protection of the civil rights laws.

specifically weighed the burdens imposed upon plaintiffs, has made the considered judgment that suits should be filed within six months. In the long line of decisions of this Court referred to earlier, the Court without deviation has adhered to the principle that a state statute of limitations will be disregarded by the Court only if it is manifestly so unreasonable as to amount to a denial of justice. As we demonstrate below, Pennsylvania's statute passes this test.

The Court of Appeals theorized that six months simply is too short a time period in which to expect that a plaintiff can realize that he or she has been deprived of a constitutional right, consult a lawyer, and file a claim. Pet. App. A-10. In so doing the court ignored the fact that Congress itself has prescribed

six-month limitations periods for commencement of actions every bit as complex as civil rights claims. See, e.g., 42 U.S.C. §2000e-5(e) (employment discrimination); 42 U.S.C. §3610(b)- (housing discrimination). Clearly, "[t]he reasonableness [of the State's] approach is suggested by the fact that several federal statutes [cited above]. . . take the same approach. . . ." Robertson v. Wegmann, supra, 436 U.S., at 592, n.9. Furthermore, this Court recently borrowed a six-month limitation from federal law for purposes of a suit by a union member against both the employer and the employe's union. Del Costello v. International Brotherhood of Teamsters, No. 812386 (June 8, 1983); see also United Parcel Service, Inc. v. Mitchell, 451 U.S. 56 (1981) (applying 90-day state statute of limitations to action by union member

against his employer). Finally, in a variety of contexts the Court has rejected challenges to statutes of limitations of less than one-year. See Turner v. New York, 168 U.S. 90 (1897)(six months); Mills v. Scott, 99 U.S. 25 (1878) (nine months and fifteen days); Terry v. Anderson, 95 U.S. 628 (1877) (same).

At bottom, the Court of Appeals' conclusion that six months is too short a time period for the average plaintiff to recognize a constitutional violation and file a claim rests on no more than unsupported guesswork. Certainly, as we have demonstrated above, six months is not, inherently, an unreasonable limitation - at least in the judgment of Congress and this Court. The Pennsylvania Legislature carefully weighed the relative policies in

deciding that six months was sufficient time for a plaintiff to press a claim. And it cannot be overlooked with respect to the practicalities of litigation which so swayed the Court of Appeals that Pennsylvania law requires fact pleading which imposes a much greater burden on plaintiffs than does federal notice pleading.[7] Compare Pa. R.Civ. P. 1019(a) and General State Authority v. Lawrie & Green, 24 Pa. Commonwealth Ct. 407, 356 A.2d 851 (1976), with Fed.R.Civ.P. 8(a) and

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[7]The Court of Appeals' concern for uniformity (Pet. App. A-12 - A-14) was misplaced. This Court has held squarely and repeatedly that concerns of uniformity, while a strong federal policy in certain contexts, are not sufficient to displace state statutes of limitations. Burnett v. Grattan, supra, slip op. at 10, n.14; Board of Regents v. Tomanio, supra, 446 U.S., at 489; Robertson v. Wegmann, supra, 436 U.S., at 594, n.11.

Conley v. Gibson, 355 U.S. 41, 47 (1958).

In focusing solely on the remedial policies of 1983, the Court of Appeals not only ignored the significant policies advanced by statutes of limitations; it also failed to recognize and give weight to the policies underlying the borrowing provisions of Section 1988. That provision reflects the Congressional judgment that generally applicable state rules necessary to fill the interstices in federal law must be applied absent a manifest conflict with federal law. This is precisely the impact of the Court's statement in Tomanio, "In most cases, [state rules] are binding rules of law." 446 U.S., at 484. As applied to this particular case, Section 1988 compels the conclusion that Pennsylvania's six-month

statute of limitations is a binding rule of law. It is concededly applicable to this cause of action; it applies uniformly to state and federal claims; and, it is not manifestly so unreasonably short as to amount to a denial of justice.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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No. 82-1889

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, *et al.*,
Petitioners,

v.

MADELIN H. KNOLL,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

The opinions below and the basis of this Court's jurisdiction are set out at page 1 of the brief for petitioner (hereinafter Pet. Br.), and the text of the relevant federal statutes appears at Pet. Br. 2-3. The text of the relevant Pennsylvania statutes is set out in the appendix to this brief.

COUNTER-STATEMENT OF THE CASE

"It is now settled that federal courts will turn to state law for statutes of limitations in actions brought under [the Reconstruction] civil rights statutes." *Burnett v. Grattan*, —— U.S. ——, 104 S.Ct. 2924, 2929 (1984). The issue before this Court is what Pennsylvania statute of limitations should be applied to determine the timeliness of § 1983 actions against public officials filed in the federal district courts in Pennsylvania alleging employ-

ment discrimination on the basis of sex in violation of the Equal Protection Clause of the 14th Amendment.

Respondent, a public school teacher employed in the Springfield Township School District in Pennsylvania, filed this lawsuit on April 21, 1981. Named as defendants were the Springfield Township School District, the Superintendent and the members of the School Board. The complaint contained two causes of action: (1) that respondent had been discriminated against by petitioners because of her sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, and (2) that said discrimination denied her the equal protection of the laws guaranteed by the 14th Amendment, and thus was actionable under the Civil Rights Act of 1871 (42 U.S.C. § 1983). Petitioners moved for summary judgment on the ground, *inter alia*, that both causes of action were untimely.

A. *The Decision of the District Court*

The district court granted summary judgment for defendants on both causes of action. It held that the Title VII claim was not timely filed because, in the court's view, plaintiff had filed her charge with the Equal Employment Opportunity Commission more than the allowed 180 days after the last act of discrimination alleged in the complaint (Pet. A 21-22).

The district court dismissed the § 1983 claim as against the School District on a ground other than untimeliness—a holding that was not challenged on appeal (Pet. A 25-26; see *infra* n.4.)

Most pertinent here, the district court held that the § 1983 claim against the individual defendants was time-barred (Pet. A 26-27), because it was not brought within the six-month period prescribed in 42 Pa. Cons. Stat. Ann. § 5522(b)(1), which applies to:

> An action against any officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this subchapter.

The district court reasoned that "cases dealing with torts which interfere with another's economic rights or interests" are not covered by any of the more specific limitation provisions of the Pennsylvania statutes, and thus are governed by "the residuary provisions of Pennsylvania's limitations scheme" (Pet. A 27). There are two such "residuary provisions": the six-month provision of § 5522(b)(1) quoted above, and the six-*year* provision of § 5527(6), which is applicable to "[a]ny civil action or proceeding which is [not] subject to another limitation specified in this subchapter." The district court held that "where the claim is against an officer of a government unit for action taken in the execution of his office the clear language of § 5522(b)(1) compels the imposition of the six month limitation period" (Pet. A 27). The court was "persuaded" that

> "§ 5522(b)(1) represents the legislature's considered judgment that actions against public officials which are so uncommon that they do not fall within other specific limitations periods, should be brought within six months." [Pet. A. 27, quoting *Clyde v. Thornburgh*, 533 F.Supp. 279, 288 (E.D. Pa. 1982)].

Accordingly, the court concluded, the § 1983 claim against the individual defendants was untimely because it was not filed within six months of the last act of discrimination alleged in the complaint (Pet. A 27 & n.8).

B. *The Decision of the Court of Appeals*

Respondent appealed the dismissal for untimeliness of her Title VII and § 1983 claims. The court of appeals found that the district court had erred in its disposition of both claims, reversed the summary judgment order, and remanded the case for further proceedings. (Pet. A 18).

With respect to the Title VII claim, the court of appeals noted that in the complaint—the allegations of which had to be accepted as true in the present posture of the case (Pet. A 3, 17)[1]—respondent had alleged "a continuing policy of discrimination" that manifested itself in "three distinct acts of discrimination," the most recent of which (in September, 1980) was less than 180 days prior to the filing of her EEOC charge. Accordingly, respondent's Title VII claim was not dismissable for want of a timely EEOC charge. (Pet. A 16-18).[2]

The court of appeals then turned to the timeliness of respondent's § 1983 claim, which was filed in district court approximately seven months after the alleged discrimination in September 1980. The court of appeals agreed with the district court that the § 1983 claim "does not fit under one of the specific provisions" of "the new Pennsylvania limitations schema," for that schema contains no specific provision "applicable to the torts of wrongful discharge or interference with contractural or economic rights" (Pet. A 7). Accordingly:

> Our focus in this inquiry must shift from probing the nature of the cause of action—which is irrelevant once the more specific, non-residuary provisions have been discounted as inapplicable—to determining which [residuary] statute of limitations the Pennsylvania courts would have applied had this action been brought under state law. [*Id.*]

The court concluded, again in agreement with the district court, that the Pennsylvania courts would have applied the six-month residuary time limit of § 5522(b)(1) (Pet. A 7-8).

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[1] The district court had granted summary judgment on a record consisting solely of the complaint and answer (Pet. A 17).

[2] Petitioners have not sought review of this holding in this Court, and accordingly this case must in any event go back to the district court for further proceedings on respondent's Title VII claim against all petitioners. See Pet. Br. 6 n.5.

The court proceeded to hold, however, that borrowing that time limit would be "inconsistent with the Constitution and laws of the United States" (Pet. A 8, quoting 42 U.S.C. § 1988)), more precisely, "inconsistent with the federal policy underlying [§ 1983]" (Pet. A 9, quoting *Johnson v. Railway Express Agency*, 421 U.S. 454, 465 (1975)). This is so, the court found, for two independent reasons:

First, a six-month time limit is so short that it would substantially undermine the purposes that Congress sought to achieve through enactment of § 1983 (Pet. A 10-12). The court explained:

> We are persuaded . . . that the average plaintiff who has been injured by state action is not sufficiently conversant with the intricacies and subtleties of constitutional law to recognize the constitutional deprivation, consult a lawyer, and prepare a case for filing in court within six months. Such a short statute of limitations is not "sufficiently generous in [its] time period [] to preserve the remedial spirit of federal civil rights actions." *Childers v. Independent School District*, 676 F.2d 1338, 1343 (10th Cir. 1982) (quoting *Shouse v. Pierce County*, 559 F.2d 1142, 1146 (9th Cir. 1977)).
>
> * * *
>
> Applying a six-month statute of limitations would have a decided tendency to severely limit access to the courts for the purpose of vindicating these individual rights. It would be counterproductive to the popular recourse to the Civil Rights Acts. [Pet. A 10, A 11-12].

Second, even if a six-month time limit were not inherently too short, Pennsylvania's particular limitations scheme—which prescribes a six-month residuary time limit for suits against public officials, but a six *year* residuary time limit for identical suits against all other defendants—is "inconsistent with the legislative history and

subsequent judicial construction of [the Civil Rights] Acts" (Pet. A 12). Many of the wrongs condemned by the Civil Rights Acts are made actionable against both public and private persons. For example, race discrimination in private employment is actionable under § 1981, and "would be subject [in Pennsylvania] to a six-year statute of limitations" (A 13). The court "refuse[d] to believe" that the Congress that enacted the Civil Rights Acts—which had as one of its objectives overcoming the states' resistance to the full enjoyment of federal constitutional rights—"intended to sanction" the states' enacting time limits applicable to § 1983 suits against their own officials that are shorter than those applicable to suits against private defendants for "identical" wrongs. (Pet. A 14).

Having concluded that the district court erred in determining the timeliness of this claim by reference to § 5522(b)(1), the court of appeals held "that Pennsylvania's residuary six-year statute of limitations [§ 5527(6)], which applies in the absence of another applicable limitations period, should govern this § 1983 action." (Pet. A 15).[3]

INTRODUCTION AND SUMMARY OF ARGUMENT

"It is now settled that federal courts will turn to state law for statutes of limitations in actions brought under [the Reconstruction] civil rights statutes." *Burnett v. Gratton*, —— U.S. ——, 104 S.Ct. 2924, 2929 (1984). There is no dispute here that a Pennsylvania state court would apply the six-month time limit of 42 Pa. Cons. Stat. § 5522(b)(1) if a suit similar to that filed by respondent

[3] Although challenging the court of appeals' rejection of § 5522(b)(1), petitioners have not asked this Court to review its choice of § 5527(6) as a substitute should this Court agree that § 5522(b)(1) does not control this action. See, *Burnett v. Gratton*, —— U.S. ——, 104 S.Ct. 2924, 2927 n.7 (1984); *Johnson v. Railway Express Agency*, 421 U.S. 454, 462 n.7 (1975).

were filed in state court under state law. The question here is whether application of that statute to respondent's § 1983 claim would be inappropriate, or, as the court of appeals concluded, "inconsistent with the federal policy underlying [§ 1983]."

1. If respondent's suit here had been against a private employer, it is undisputed that Pennsylvania would apply a six-*year*, not a six-*month*, time limit to the action. Pennsylvania would apply a six-month time limit to an action like respondent's under state law only because the action is brought against public officials. Thus, application of the six-month Pennsylvania statute to respondent's § 1983 action would suffer from precisely the defect pointed out in *Burnett v. Gratton*, —— U.S. ——, 104 S. Ct. 2924, 2932 & n.18 (1984): where a state, based on a policy of "prompt resolution of public employee disputes" or of "minimizing the diversion of State officials' attention from their duties," adopts an "abbreviated" time limit applicable only to suits against public officials, the time limit "is manifestly inconsistent with the central objective of the Reconstruction-era civil rights statutes. . . ." The *Burnett* Court recognized that "'[it] would be anomalous for a federal court to apply a state policy restricting remedies against public officials to a federal statute that is designed to augment remedies *against these officials*, especially a federal statute that affords remedies for the protection of constitutional rights.'" 104 S.Ct. at 2932 n.18 (quoting *Pauk v. Board of Trustees*, 654 F.2d 856, 862 (2nd Cir. 1981)) (emphasis added). The legislative history and the scheme of time limits adopted by the state indicate that Pennsylvania's six-month time limit for certain actions against public officials is based on precisely the policies condemned in *Burnett*, and not on the "policies" that petitioners proffer in their brief. But whatever policies may have prompted Pennsylvania's decision to provide an "abbreviated" time limit when the defendant is a public official, the consequent insulation of public officials from suits maintain-

able against all other defendants "is manifestly inconsistent with the central objectives of the Reconstruction-era civil rights statutes" and, under *Burnett*, cannot provide the time limit that controls § 1983 actions.

2. The decision below should be affirmed for a second, and independent, reason: a six-month time limit is too short for application to § 1983 actions, at least in the absence of a significant interest, articulated by the state legislature, that is not inconsistent with the policies informing § 1983. Again, the words of *Burnett* are pertinent here. After evaluating in some detail the "practicalities" of litigating federal civil rights claims, the *Burnett* court concluded (104 S.Ct. at 2930, 2931):

> A state law is not "appropriate" if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Acts.
>
> * * * *
>
> The [six-month] time limit established by the Maryland legislature reflects in part the minimal burden state law places on the administrative complaint, which does not correspond in any significant way to the substantial burden federal law places on a civil rights litigant.

The court below, based on its own evaluation of the burdens confronting a prospective civil rights plaintiff, was persuaded that in practice a six-month time limit "would have a decided tendency to severely limit access to the courts for the purpose of vindicating these individual rights" (Pet. A 11-12). That concern is borne out by the paucity of state statutes that actually prescribe so short a time limit for the institution of litigation by individuals.

The potential that six-month time limits might, as a practical matter, undermine access to the federal courts under § 1983 is ample justification for concluding that such time limits are *per se* too short for § 1983 actions.

At the very least, in light of the risks inherent in so short a time limit, a six-month limit should not be applied to § 1983 actions unless the state legislature has identified a significant interest, not inconsistent with the federal policies that inform the civil rights laws, that is to be served by that time limit. No such interest has been identified by the Pennsylvania Legislature with respect to the six-month time limit at issue here. Indeed, in this case, because the six-month time limit is "residuary," the state has by definition never identified, much less considered, the types of claims to which the six-month time limit would apply. It follows that the state did not, and could not have, assessed "the interests in favor of protecting valid claims" (*Johnson v. Railway Express Agency*, 421 U.S. 454, 463 (1975)) in establishing that time limit. In these circumstances, it would not be appropriate to apply the six-month time limit here to actions under § 1983.

ARGUMENT

I. THE COURT BELOW PROPERLY REJECTED APPLICATION OF § 5522(b)(1) TO § 1983 ACTIONS BECAUSE IT PRESCRIBES A SHORTER TIME PERIOD FOR SUITS AGAINST PUBLIC OFFICIALS THAN THE STATE LEGISLATURE HAS PRESCRIBED FOR SUITS AGAINST PRIVATE PERSONS CHARGED WITH IDENTICAL WRONGS

As the opinion below explains, under Pennsylvania's limitations scheme an employment discrimination claim by a public employee against a public official must be brought within six months, while an identical employment discrimination claim by a private employee against private defendants may be brought for up to six years. The Pennsylvania statutes thus work two simultaneous discriminations: public employees are afforded a more restricted opportunity to challenge discrimination than pri-

vate employees,[4] and public officials are shielded from accountability for their wrongs for a 5½-year period in which their private counterparts are not.

In *Burnett*, this Court found wanting a contention that certain asserted state interests justified application to § 1983 actions of "abbreviated" state time limits governing suits by public employees and/or suits against public officials:

> Petitioners urge the prompt assertion and resolution of public employee disputes in particular, noting that this important policy is clearly mirrored in . . . an abbreviated period for the filing of claims of employment discrimination . . . That policy, keyed to a classification of plaintiffs, cannot preempt the broadly remedial purposes of the Civil Rights Acts, which make no distinction among persons who may look to the courts to vindicate their federal constitutional rights. If the statute of limitations in Art. 49B is "abbreviated" precisely because it effectuates the narrower state goal, a federal court should look elsewhere in state law for an appropriate limitation period.
>
> Similarly, the state petitioners argue that the short limitations period in Art. 49B should be applied here because it affords public officers "some reasonable protection from the seemingly endless stream of unfounded, and often stale, lawsuits brought against them." . . . This contention under-

[4] As explained *infra*, n.8, the six month time limit of § 5522 (b) (1) does not apply to suits by public employees against the government entity that employs them (as distinguished from the public officials who visited the discrimination). But often the public employee will be unable to seek relief under § 1983 against the government entity, either because of the Eleventh Amendment (*Edelman v. Jordan*, 415 U.S. 651 (1974)), or because the actions of the public official are not chargeable to the entity under the principles of *Monell v. Department of Social Services*, 436 U.S. 658, 691-95 (1978). The latter barrier, for example, was found to be applicable here (see A 25-26, dismissing the § 1983 claim against the School District on the basis of *Monell*).

> cuts rather than buttresses the case for applying the limitations period embodied in Art. 49B to federal civil rights actions. The statement suggests that the legislative choice of a restrictive six-month limitations period reflects in part a judgment that factors such as minimizing the diversion of State officials' attention from their duties outweigh the interest in providing employees ready access to a forum to resolve valid claims. That policy is manifestly inconsistent with the central objective of the Reconstruction-era civil rights statutes, which is to ensure that individuals whose federal Constitutional or statutory rights are abridged may recover damages or secure injunctive relief. [Citing cases].[18]

[18] As the Court of Appeals for the Second Circuit has noted, "[it] would be anomalous for a federal court to apply a state policy restricting remedies against public officials to a federal statute that is designed to augment remedies against those officials, especially a federal statute that affords remedies for the protection of constitutional rights." *Pauk v. Board of Trustees*, 654 F.2d 856, 862 (1981) (rejecting applicability of 1 year and 90-day limitation period in N.Y. Gen. Mun. L. § 50-i (McKinney) for actions against city or its employees to action brought under § 1983), cert. denied, 455 U.S. 1000 (1982).

Burnett, 104 S.Ct. at 2932 & n.18.

The holding below—that a state statute prescribing a separate and shorter time limit for suits against public officials than for comparable suits against private persons should not govern the timeliness of § 1983 actions—parallels precisely the Second Circuit's holding in *Pauk* which this Court endorsed in *Burnett*. In *Pauk*, the Second Circuit had explained:

> § 50-i represents a New York policy to provide more restrictive remedies against municipal employers for their torts than are available against private citizens, for whom the limitations period . . . is three years.

Pauk, 654 F.2d at 862. It is that policy which the *Pauk* court condemned in the passage quoted in *Burnett*.

In an effort to escape the holding of *Burnett*, petitioners proffer an assortment of "state policies"—different from the policies that had been advanced in *Burnett* in support of the time limit there—that would be "fostered" by applying a six-month time limit to suits against public officials. Pet. Br. 21-23. See also Brief of Amici Curiae on Behalf of Pennsylvania et al. (hereinafter State Br.), at 15-17. We do not understand *Burnett*'s condemnation of "abbreviated" time limits for suits against public officials to be confined to those predicated on the particular justifications proffered there. But even if that were the case, petitioners' effort to distinguish the Pennsylvania limitations scheme would be unavailing. For no evidence is tendered by petitioners that the policies they describe are in fact what actuated the Pennsylvania legislature in enacting § 5522(b)(1). To the contrary, such legislative history as exists suggests that § 5522(b)(1) was adopted for the very purpose condemned in *Burnett* (to insulate public officers from "vexatious" lawsuits), and the Pennsylvania limitations scheme makes evident that the "policies" that petitioners and the States proffer are *not* what actuated § 5522(b)(1).

1. As petitioners correctly explain, the Pennsylvania legislature, as part of an overall revamping of its statutes of limitations in 1978, "generalized the six-month statute of limitations set forth in the Act of March 21, 1772 (1 Sm. L. 364), Section 7 . . . so that it became the residual statute of limitations for actions against public officers." (Pet. Br. 13-14).[5] The 1772 Act had applied a six-month time limit only to suits against Justices of the Peace and constables; until enactment of § 5522(b)(1), suits against all other public officials in Pennsylvania were without exception governed by whatever time limits, invariably longer than six months, applied to suits against private persons for the same al-

[5] See Official Source Note, 42 Pa. C.S.A. § 5522, page 24.

leged wrong.[6] The purpose of the six-month statute of limitations in the 1772 Act is not left to speculation; it was stated both in the title of the Act ("An ACT for rendering Justices of the Peace more safe in the execution of their office . . .") and in the first two "whereas" clauses that introduced its substantive provisions:

> WHEREAS Justices of the Peace may be discouraged in the execution of their office, by vexatious actions brought against them, for or by reason of small and involuntary errors in their proceedings; And whereas it is necessary that they should be (as far as is consistent with justice, and the safety and liberty of the subjects over whom their authority extends) rendered safe in the execution of the said office and trust . . .

When this Act was "generalized" in 1978 to become the residual statute of limitations for suits against *all* public officers, the "whereas" clauses were removed—none of the limitation provisions in the revamped Judicial Code contain such clauses—but there is nothing in the legislative record to suggest that the legislature was actuated in 1978 by anything other than what appeared on the face of the 1772 Act whose time period the 1978 legislature extended to all public officers, *i.e.*, to insulate such officers from "vexatious actions brought against them."[7]

2. Moreover, the briefest reflection will make evident that the legislative purpose underlying § 5522(b)(1) *could not* be the quite different factors proffered in the briefs of petitioners and *amici*.

[6] See, *e.g.*, *Skehan v. Bd. of Trustees of Bloomsburg State Col.*, 590 F.2d 470, 476-77 (3rd Cir. 1978).

[7] The extent of the resulting disparity is reflected in the fact that the Pennsylvania legislature enacted a residuary period *near the high end* of the range of more specific time limits for suits against private defendants (six years) and *at the low end* for suits against public officials. We have printed as an appendix to this brief the full text of 42 Pa. C.S.A. §§ 5522-27, the limitations statutes prescribing periods ranging from six months through six years.

a. Petitioners and *amici* both cite the high turnover in public officers as a reason why the government entity would want suits against *it* brought quickly. Pet. Br. 21-22; State Br. 17. But as the States' brief recognizes (at 16 n.5), "the six-month limitation applies to [suits against] officers, but not to [suits against] government entities." The time limit in Pennsylvania for suing government entities for claims subject to the "residuary" time limits is twelve times longer than that for suing public officers on such claims[8]—a scheme that refutes petitioners' suggestion that the six-month limit was prompted by legislative concern for the government's capacity to defend itself.

This same consideration shows that the legislature was not motivated (as the States' brief suggests at 15-16) by interests in "safeguarding the efficacy of the fact-finding process and precluding the overturning of settled expectations"—interests that are equally implicated when the government entity itself is sued.

And, this same consideration also refutes petitioners' speculation (Pet. Br. 22) that the purpose of a short time limit might have been to abbreviate the period in which "two salaries may be required to be paid for a single service"; that concern would have prompted a short time limit for suits against government entities as well.

[8] As government entities are not protected by § 5522(b)(1), "residuary" actions against them, when maintainable (see n.4, *supra*), would be covered by the 6-year residuary time limit of § 5527(6). Section 5522(a) requires six months' *notice* of an intention to sue a government entity for "injury to . . . person or property," a suit that would be governed by the two-year time limits prescribed in § 5524(2) and (3). That notice requirement is not applicable to any other suits against government entities, *Clyde v. Thornburgh*, 533 F. Supp. at 286-87 & n.11, and perforce would not be applicable to any suits governed by the residuary time limits (including employment discrimination actions, which are treated in Pennsylvania as involving injury to "economic interests" rather than to "person or property," Pet. A 7, 27; *Fitzgerald v. Larson*, No. 83-3493 (3rd Cir. Aug. 20, 1984)).

Moreover, petitioners' speculation in this regard presumes that the legislature realized when it adopted the six-month "residuary" time limit that that limit would apply to employment discrimination actions—a proposition for which petitioners offer no support and that, as we explain in the margin, is highly doubtful.[9]

b. Another aspect of the legislative scheme corroborates that the foregoing policies were not what prompted the six-month time limit, and shows as well that the legislature was not motivated by the remaining concern recited in the brief of petitioners (to "foster deterrence of unlawful conduct by public officials" by more promptly exposing their defalcations (Pet. Br. 22-23)). Neither petitioners nor the State is able to explain why, if any or

[9] That the legislature likely did not so realize is evident from the following consideration: The pre-§ 5522(b)(1) cases all had measured the timeliness of employment discrimination actions by reference to contract or tort limitations periods. *Davis v. United States Steel Supply*, 581 F.2d 335, 336 n.1 (3rd Cir. 1978) (*citing cases*). When the limitations statutes were overhauled, specific contract and tort time limits remained (albeit in altered form), and § 5522(b)(1) was made applicable only to those suits against public officials that were not "subject to another limitation." It would have taken an extraordinarily prescient legislature to anticipate that following the revamping of the statutes of limitations courts would no longer look to contract and/or tort limitations periods to determine the timeliness of employment discrimination suits. And, indeed, until settled by the decision below the issue was a subject of conflict among the district courts in Pennsylvania. Contrast the district court decision in the instant case and *Clyde v. Thornburgh*, *supra* (both holding residuary statute applicable) with *Al-Khazraji v. St. Francis College*, 523 F. Supp. 386, 390 (W.D. Pa. 1981) (six-year contract statute applicable); *Hutchings v. Erie City and County*, 516 F. Supp. 1265, 1270-71 (W.D. Pa. 1981) (four- or six-year contract statute applicable); *Mazur v. Department of Revenue, Com. of Pa.*, 516 F. Supp. 1328, 1332 (M.D. Pa. 1981) (same; *dictum*). Put another way, if the legislature had consciously decided that employment discrimination suits against public officials should be governed by a six-month time limit, one would expect it to have so provided expressly in the statute—just as innumerable other causes of action were assigned specific time limits. (See appendix to this brief).

all of the factors they cite had truly been a matter of legislative concern, longer limitations periods were prescribed for the vast majority of suits that are brought against public officers. It must be recalled that § 5522 (b) (1) applies only when there is not a more specific limitations period applicable:

> § *5522(b)*. The residual statute for actions against a public officer (*i.e. for actions other than personal injury, libel, slander, contract of sale, for withholding moneys, on his official bond, etc.*) is fixed at six months.

Pennsylvania Bar Association Judicial Code Explanation, 42 Pa. Cons. Stat., p. xv (emphasis added). And the legislature expected that suits falling within the six-month period would be "uncommon":

> § 5522(b) (1) represents the legislature's considered judgment that actions against public officials *which are so uncommon that they do not fall within other specific limitations periods*, should be brought within six months.

Pet. A 27; *Clyde v. Thornburgh*, 533 F.Supp. at 288 (emphasis added). See also Pet. Br. 20.[10]

In sum, no amount of inventive advocacy can mask the fact that § 5522(b) (1) has no apparent legislative purpose other than to extend the insulation provided by the 1772 Act to protect all public officers against the burden of defending claims that the legislature could not anticipate or evaluate. As stated in the 1772 Act, the objective was to reduce "vexatious" claims against public officers. Section 5522(b) (1) is, accordingly, not the proper basis for determining the timeliness of § 1983 actions; it is not appropriate, and it is "inconsistent with the central objective of the Reconstruction era civil rights statutes . . ." *Burnett*, 104 S.Ct. at 2932.

[10] One other, more insidious, purpose can be imagined: that Pennsylvania enacted an unusually short time limit knowing that its *state-law* applications would be "uncommon," but anticipating that (as is indeed the case) its *federal-law* applications would be substantial—a discrimination against the federal cause of action that would represent an additional reason for not applying § 5522 (b) (1) to § 1983 actions. *Burnett*, 104 S.Ct. at 2931 n.15. As noted above (p. 15 & 9), there is no evidence that the legislature had civil rights actions (state *or* federal) in mind when it enacted § 5522(b) (1). But the *effect* of the Pennsylvania limitations scheme is precisely such discrimination, even if not intended.

II. SIX-MONTH TIME LIMITS ARE TOO SHORT FOR APPLICATION TO § 1983 ACTIONS, AT LEAST IN THE ABSENCE OF A SIGNIFICANT INTEREST, ARTICULATED BY THE STATE LEGISLATURE, THAT IS NOT INCONSISTENT WITH THE POLICIES INFORMING § 1983

In *Burnett*, this Court identified the "practicalities that are involved in civil rights claims" that persuaded the Court that a state's six-month time limit for filing a charge with an administrative agency was not the "appropriate" state statute to adopt for determining the timeliness of civil rights lawsuits:

> An appropriate limitations period must be responsive to [the] characteristics of litigation under the federal statutes. A state law is not "appropriate" if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Acts.
>
> Applying these criteria for disqualifying a particular state law, we begin with the observation that . . . the dominant characteristic of civil rights actions [is that] they belong in court. . . . Assuring the full availability of a judicial forum necessitates attention to the practicalities of litigation. Litigating a civil rights claim requires considerable preparation. An injured person must recognize the constitutional dimensions of his injury. He must obtain counsel, or prepare to proceed pro se. He must conduct enough investigation to draft pleadings that meet the requirements of federal rules; he must also establish the amount of his damages, prepare legal documents, pay a substantial filing fee or prepare

additional papers to support a request to proceed in forma pauperis, and file and serve his complaint. At the same time, the litigant must look ahead to the responsibilities that immediately follow filing of a complant. He must be prepared to withstand various responses, such as a motion to dismiss, as well as to undertake additional discovery.

* * *

. . . The [six-month] time limit established by the Maryland legislature reflects in part the minimal burden state law places on the administrative complainant, which does not correspond in any significant way to the substantial burden federal law places on a civil rights litigant. [104 S. Ct. at 2930, 2931 (footnotes omitted).] [11]

The court below, writing before *Burnett*, evaluated similarly the practical burdens confronting the prospective civil rights plaintiff (Pet. A 10-12, quoted *supra* at 5), and was persuaded that in practice a six-month time liimt "would have a decided tendency to severely limit access to the courts for the purpose of vindicating these individual rights" (Pet. A 11-12).

That this concern is widely shared is evidenced by the paucity of state statutes that actually prescribe so short a time limit for the institution of litigation by individuals. In Pennsylvania, for example, as petitioner explains (Pet. Br. 14 n.11):

> the statutory scheme, conforming "to the modern principle that claims based on conduct, and hence heavily relying on unwritten evidence, should have relatively short statutes of limitations . . ." (*Pennsylvania Bar Association Judicial Code Explanation*, supra, at p. xvi-xvii) consequently set the limitation period for libel, slander and invasion of privacy at one (1) year, 42 Pa. Cons. Stat. Section 5523; for assault, battery, false imprisonment, false arrest, malicious prosecution, malicious abuse of process, actions to recover damages for injury to the person or for wrongful death, or for the taking, detaining or injuring of personal property at two (2) years, 42 Pa. Cons. Stat. Section 5524 [and on up to progressively longer time limits for less conduct-based claims].[12]

The Pennsylvania pattern is typical.[13] That states prescribe one-year time limits even for those claims of individuals thought most needful of prompt initiation is testament to a general legislative understanding that any shorter time limits might as a practical matter deprive prospective plaintiffs of their cause of action.

Of course, there can be unique situations in which competing interests can dictate a need for exceptionally short time limits. The labor relations context provides perhaps the most prominent example, and this Court indeed has "borrowed" a six-month statute of limitations to determine the timeliness of certain lawsuits in that context. *DelCostello* v. *Internat'l Brotherhood of Teamsters*, 462 U.S. ——, 103 S. Ct. 2821 (1983). But as this Court explained in *Burnett*, 104 S. Ct. at 2931 n.14, "we do not find [*DelCostello*] relevant to the civil rights issue before us . . . The importance of uniformity in the labor law field, and 'the realities of labor relations and litigation,' *id.* at ——, informed our decision [in *DelCostello*]." [14]

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[11] But see, *id.* at 2936 (concurring opinion of Justice Rehnquist): Unlike the Court . . . I do not believe that the 'practicalities' of litigation necessarily mean that a six-month limitations period is an unreasonable time in which to bring a federal cause of action.

[12] As petitioner goes on to note (Pet. Br. 15 n.11), apart from § 5522(b)(1) Pennsylvania has prescribed a six-month time limit for only three narrowly defined causes of action.

[13] The statutes of limitations of each state are described in VII *Martindale-Hubbell Law Directory, Law Digests* (1984), under the caption "Limitation of Actions."

[14] Petitioners and the States cite early decisions of this Court refusing to hold certain state statutes of limitations *unconstitutional* because of their shortness (Pet. Br. 16-17 n.13; State Br. 31). Those decisions provide petitioners no support, even apart

Given the potential that six-month time limits might undermine access to the federal courts under § 1983, and the reality that states do not prescribe time limits that short even for those torts deemed most needful of prompt initiation, there is ample justification for a ruling that such time limits are *per se* too short for application to § 1983 actions. It is, however, possible to resolve the instant case on the basis of a narrower proposition: that, in light of the risks inherent in so short a time limit, at the very least a six-month time limit should not be applied to § 1983 actions unless the state legislature has identified a significant interest, not inconsistent with the federal policies that inform the civil rights laws, that is to be served by that time limit.

No such interest has been identified by the Pennsylvania legislature with respect to the statute at issue here. As we have shown, *supra* at 12-13, such evidence as exists suggests that the six-month time limit was enacted here merely to shield public officers from the bur-

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from the consideration that a different question was being answered than that posed here.

Burrill v. Locomobile Co., 258 U.S. 34 (1922), involved a six-month time limit for suits by corporations challenging corporate tax assessments. The Court's holding, *id.* at 38, was:

> The time for filing the petition is not unreasonably short for this class of cases, considering that the statute is dealing with taxes on the one side and business organizations on the other.

The other three decisions cited by petitioners and the States did not involve the constitutionality of short statutes of limitations *vel non*, but rather the constitutionality of statutes shortening the *remaining* time for filing suit on causes of action that had accrued years earlier. *Terry v. Anderson*, 95 U.S. 628 (1877) (statute reduced to nine months and 17 days the *remaining* time in which to institute causes of action that had accrued at least four years earlier); *Mills v. Scott*, 99 U.S. 25, 27-28 (1879) (same); *Turner v. State of New York*, 168 U.S. 90, 94 (1897) (statute reduced to six months the *remaining* time in which to institute suit seeking to overturn the conveyance of land to the State for non-payment of taxes in "those cases only in which the conveyance has been of record for two years . . .").

dens of defending litigation—a purpose this Court has found antithetical to the federal policy underpinning § 1983. *Burnett*, 104 S. Ct. at 2932. And even if that evidence were deemed too equivocal to permit a finding that that was the legislative purpose, what would remain is a complete absence of *any* articulated legislative purpose for a time limit that short.

Indeed, deference to a state's choice of aberrationally short time limits should be at its least when, as here, the time limit is "residuary." Such time limits do not reflect the weighing of competing values by the State legislature that this Court has understood to be the reason for Congress' reference to state rules of decision in § 1988:

> Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects *a value judgment* concerning the point at which *the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.* . . . In borrowing a state period of limitations for application to a federal cause of action, a federal court is relying on *the state's wisdom* in setting a limit . . . on the prosecution of a *closely analogous claim.*

Johnson v. Railway Express Agency, 421 U.S. 454, 463-64 (1975) (emphasis added).[18] In the instant case, petitioners and the States invoke this analysis in support of their positions (Pet. Br. 19; States Br. 24, 27). But the analysis is inapposite in the case of a residuary statute. Such a statute may reflect the legislature's view

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[18] See also, *Burnett*, 104 S. Ct. at 2930-31 (emphasis added):

> When a legislature selects a statute of limitations to govern a *particular cause of action*, it takes into account the burdens borne by the parties to a *suit of that sort*. . .
>
> A legislative definition of a statute of limitations also reflects a policy assessment of the state causes of action to which it applies. . .

about the need for repose, but as the causes of action that may fall into its ambit have not been individually identified and evaluated, the need for repose cannot have been balanced against the interests inhering in those causes of action. What "weight" can the State have assigned to "the interests in favor of protecting valid claims," when the claims in question are ones the State has not identified or considered?[16] And what significance should federal courts attach to the State's choice of a "residuary" time limit of exceptional shortness when not only has there been no legislative consideration of the implications for federally-created rights or even of "closely analogous" state-created rights, but the time limit was thought to be applicable only to "uncommon" causes of action (see p. 16, *supra*)? This Court's admonition in *Burnett* seems precisely applicable to such "residuary" time limits:

> A state law is not "appropriate" if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Acts. [104 S.Ct. at 2930].

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[16] The one employment discrimination cause of action for which the Pennsylvania legislature has specifically considered the appropriate time limit—a suit for violation of Pennsylvania's Equal Pay Act, 43 P.S.C.A. § 336*ff* (which applies to public as well as private employees, *id.* at § 336.2(a))—may be brought "within two years from the date upon which the violation complained of occurs" (*id.* at § 336.5(b)). The statute had originally contained a one-year time limit, but was increased to two in 1968. See 43 P.S.C.A. § 336.5, Historical Note.

CONCLUSION

For the reasons set forth hereinabove, the decision below should be affirmed.

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APPENDIX

Text of the Pennsylvania statutes of limitations from six months through six years in effect at the time the instant suit was filed, 42 Pa. C.S.A. §§ 5522-27 (all located within Subchapter B (Civil Actions and Proceedings) of Chapter 55 (Limitation of Time) of the Pennsylvania Judicial Code)

§ 5522. Six months limitation

(a) Notice prerequisite to action against government units.——

(1) Within six months from the date that any injury was sustained or any cause of action accrued, any person who is about to commence any civil action or proceeding within this Commonwealth or elsewhere against a government unit for damages on account of any injury to his person or property under Chapter 85 (relating to matters affecting government units) or otherwise shall file in the office of the government unit, and if the action is against a Commonwealth agency for damages, then also file in the office of the Attorney General, a statement in writing, signed by or in his behalf, setting forth:

(i) The name and residence address of the person to whom the cause of action has accrued.

(ii) The name and residence address of the person injured.

(iii) The date and hour of the accident.

(iv) The appropriate location where the accident occurred.

(v) The name and residence or office address of any attending physician.

(2) If the statement provided for by this subsection is not filed, any civil action or proceeding commenced against the government unit more than six months after the date of injury shall be dismissed and the person to whom any such cause of action accrued for any personal injury shall be forever barred from proceeding further thereon within this Commonwealth or elsewhere. The court shall excuse noncompliance with this requirement upon a showing of reasonable excuse for failure to file such statement.

(3) In the case of a civil action or proceeding against a government unit other than the Commonwealth government:

(i) The time for giving such written notice does not include the time during which an individual injured is unable, due to incapacitation or disability from the injury, to give notice, not exceeding 90 days of incapacity.

(ii) If the injuries to an individual result in death, the time for giving notice shall commence with such death.

(iii) Failure to comply with this subsection shall not be a bar if the government unit had actual or constructive notice of the incident or condition giving rise to the claim of a person.

(b) Commencement of action required.—The following actions and proceedings must be commenced within six months:

(1) An action against any officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this subchapter.

(2) A petition for the establishment of a deficiency judgment following sale of the collateral of the debtor under the provisions of section 8103 (relating to deficiency judgments).

(3) Any action subject to 13 Pa.C.S. § 6111 (relating to limitation of actions and levies).

(4) An action under section 4563.1(c) (relating to civil liability).

§ 5523. One year limitation

The following actions and proceedings must be commenced within one year:

(1) An action for libel, slander or invasion of privacy.

(2) An action upon a statute for a civil penalty or forfeiture, where the action is given to a person other than a government unit.

(3) An action upon a bond given as security by a party in any matter, except a bond given by a condemnor in an eminent domain proceeding.

(4) An action upon any payment or performance bond.

§ 5524. Two year limitation

The following actions and proceedings must be commenced within two years:

(1) An action for assault, battery, false imprisonment, false arrest, malicious prosecution or malicious abuse of process.

(2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another.

(3) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof.

(4) An action for waste or trespass of real property.

(5) An action upon a statute for a civil penalty or forfeiture, where the action is given to a government unit.

(6) An action against any officer of any government unit for the nonpayment of money or the nondelivery of property collected upon an execution or otherwise in his possession.

§ 5525. Four year limitation

The following actions and proceedings must be commenced within four years:

(1) An action upon a contract, under seal or otherwise, for the sale, construction or furnishing of tangible personal property or fixtures.

(2) Any action subject to 13 Pa.C.S. § 2725 (relating to statute of limitations in contracts for sale).

(3) An action upon an express contract not founded upon an instrument in writing.

(4) An action upon a contract implied in law, except an action subject to another limitation specified in this subchapter.

§ 5526. Five year limitation

The following actions and proceedings must be commenced within five years:

(1) An action for revival of a judgment lien on real property.

(2) An action for specific performance of a contract for sale of real property or for damages for noncompliance therewith.

(3) An action to enforce any equity of redemption or any implied or resulting trust as to real property.

§ 5527. Six year limitation

The following actions and proceedings must be commenced within six years:

(1) An action upon a judgment or decree of any court of the United States or of any state.

(2) An action upon a contract, obligation or liability founded upon a bond, note or other instrument in writing, except an action subject to another limitation specified in this subchapter. Where an instrument is payable upon demand, the time within which an action or proceeding on it must be commenced shall be computed from the later of either demand or any payment of principal or of interest on the instrument.

(3) An action upon any official bond.

(4) A proceeding in inverse condemnation, if property has been injured but no part thereof has been taken, or if the condemnor has made payment in accordance with section 407(a) or (b) (relating to possession and payment of compensation) of the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the "Eminent Domain Code."

(5) An action to set aside a judicial sale of property.

(6) Any civil action or proceeding which is neither subject to another limitation specified in this subchapter nor excluded from the application of a period of limitation by section 5531 (relating to no limitation).